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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 373.

THE DANVILLE WATER COMPANY, PLAINTIFF IN ERROR,

vs.

THE CITY OF DANVILLE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED AUGUST 3, 1900.

(17,858.)

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1 UNITED STATES OF AMERICA:

Supreme Court, State of Illinois, February Term, A. D. 1900.

Proceedings had before the honorable the supreme court of the State of Illinois, begun and held at Springfield, to wit, on the first Tuesday in the month (being the sixth day) of February, A. D. 1900.

Present: James H. Cartwright, chief justice; Alfred M. Craig, justice; Jesse J. Phillips, justice; Joseph N. Carter, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff; A. D. Cadwallader, clerk.

Be it remembered that heretofore, to wit, on the 6th day of February, A. D. 1900, there was filed in the office of the clerk of said supreme court a certain transcript of a record, which is in the words and figures following, to wit:

2 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
Vermilion County, }

In Circuit Court, October Term, A. D. 1895.

Pleas before the Honorable Ferdinand Bookwalter, one of the three judges of the fourth judicial circuit of the State of Illinois and presiding judge of the circuit court of Vermilion county, in the State aforesaid, at a term thereof begun and held at the court-house, in the city of Danville, in said county, on the seventh day (being the first Monday) of October, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

Present: Honorable Ferdinand Bookwalter, one of the three judges of the fourth judicial circuit of the State of Illinois; Seymore G. Wilson, State's attorney; Martin J. Barger, clerk; William C. Thompson, sheriff.
Attest: MARTIN J. BARGER, *Clerk.*

First day of October term, 1895, Monday, October 7th, 1895, court convened by due proclamation, according to law, at 9 o'clock a. m. On the fifth day of September, 1895, there was filed in the office of the clerk of said court *pracipie* for summons in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Vermilion County, }

In the Circuit Court, October Term, A. D. 1895.

DANVILLE WATER COMPANY }
vs.
THE CITY OF DANVILLE. }

Trespass on the case on promises; damages, $5,000.00.

The clerk will please issue summons, returnable as above, and deliver to the sheriff of said county to execute and oblige.

W. R. LAWRENCE,
REMY & MANN,
Att'ys for Plaintiff.

3 Filed Sept. 5th, 1895.
M. J. BARGER, *Clerk.*

On the 6th day of September, 1895, there was filed in the office of the clerk of said court a summons, with the return of sheriff endorsed thereon, in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Vermilion County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summons the City of Danville, if it shall be found in your county, personally to be and appear before the circuit court of Vermilion county, on the first day of the term thereof, to be holden at the court-house, in Danville, in said Vermilion county, on the seventh day of October next, to answer unto the Danville Water Company in a plea of trespass on the case on promises, to the damage of said plaintiff, as *he* says, in the sum of five thousand dollars; and have you then and there this writ, with and endorsement thereon in what manner you have executed the same.

Witness M. J. Barger, clerk of our said court, and the seal thereof, at Danville, this 5th day of September, A. D. 1895.

M. J. BARGER, *Clerk,*
By W. T. CUNNINGHAM, *Deputy.*

Vermilion county circuit court, October term, 1895. Danville Water Company *vs.* City of Danville. Circuit court summons. Filed Sept. 6th, 1896. M. J. Barger, clerk.

Served this writ on the within-named defendant by reading and delivering a copy to W. L. Runyan, mayor of the city of Danville, this 6th day of September, 1895.

4 W. C. THOMPSON, *Sheriff.*
JAMES SLOAN, *Dep'y Sheriff.*
LAWRENCE, REMY & MANN, *Attorneys.*

Fees.

Service	.65
Copy	.10
Two miles' travel	.10
Return	.10
	$00.95

On the 16th day of September, 1895, there was filed in the office of said clerk the declaration of plaintiff in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Vermilion County, }

In the Circuit Court, October Term, A. D. 1895.

Danville Water Company, a corporation organized under the laws of the State of Illinois, plaintiff in this suit, by W. R. Lawrence and Remy & Mann, its attorneys, complains of The City of Danville, defendant, of a plea of trespass on the case on promises:

For that whereas the said defendant heretofore, to wit, on the first day of August, A. D. 1895, at, to wit, the county aforesaid, became and was indebted to the said plaintiff in a large sum of money, to wit, the sum of five thousand dollars (5,000.00 dollars), for money before that time had and received by defendant to and for the use of plaintiff.

And also in a like sum for money due and owing said plaintiff for work and labor done and performed by said plaintiff for said defendant at said defendant's special instance and request.

And also in a like sum for water pumped for and furnished to said defendant at said defendant's like special instance and request, and being so liable said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook and promised said plaintiff to pay the same when thereunto afterwards requested.

Yet the said defendant, though often requested, has not as yet paid the same or any part thereof to plaintiff, but so to do has refused and still does refuse, to the damage of plaintiff five thousand dollars, and therefore it brings suit, *ect.*

W. R. LAWRENCE.
REMY & MANN.

5 Filed Sept. 16, 1895.
M. J. BARGER, *Clerk.*

On the 7th day of October, 1895, there was filed in the office of said clerk the pleas of defendant in words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Vermilion County, }

In the Circuit Court of said County, to the October Term, A. D. 1895.

DANVILLE WATER COMPANY } Assumpsit.
vs.
CITY OF DANVILLE. }

Plea of the defendant to the plaintiff's declaration.

And the said defendant, by W. J. Calhoun and G. F. Rearick, its attorneys, comes and defends the wrong and injury when, *ect.*, at, *ect.*, and says that it did not undertake or promise in manner and form as the said plaintiff has above thereof complained in its said declaration against it, and of this it puts itself upon the country, *ect.*

G. F. REARICK, *City Att'y,*
Attorneys for Defendant.

And now comes the plaintiff and does the like, *ect.*

REMY & MANN,
W. P. LAWRENCE,
Attorneys for Plaintiff.

Filed Oct. 7th, 1895.
M. J. BARGER, *Clerk.*

On the 22nd day of October, 1895, the following proceedings were had and entered of record in the words and figures following, to wit:

October Term, 1895, 13th Day, October 22d, 1895.

DANVILLE WATER COMPANY } 11182. Assumpsit.
vs.
CITY OF DANVILLE. }

On motion of said plaintiff it has the leave of the court to file an amended declaration herein.

6 On the 22d day of October, 1895, there was filed in the office of said clerk the plaintiff's amended declaration in words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Vermilion County, }

In October Term, A. D. 1895, Vermilion County Circuit Court.

DANVILLE WATER COMPANY }
vs.
CITY OF DANVILLE. }

The said plaintiff, by Remy & Mann and W. R. Lawrence, its attorneys, by this its amended declaration, amended by leave of the

court first had and obtained, complains of the said defendants of a plea of trespass on the case on promises:

For that whereas the said plaintiff, on, to wit, the ninth day of November, A. D. 1882, was and ever since that time has been and now is a corporation duly organized under the general incorporation laws of the State of Illinois then in force, and as such incorporation having the power to make the several contracts and do and perform the several acts hereinafter mentioned, and the said defendant was and ever since has been and now is a municipal corporation created and formed under the laws of the State of Illinois, known as chapter twenty-four of Revised Statutes of said State, and the amendments thereto, and on the day and year aforesaid there was duly and lawfully passed by the city council of the said defendant an ordinance which was afterwards duly approved by the then mayor of said city and duly published according to law on the 11 day of November, A. D. 1882; which said ordinance is in the words and figures following, to wit:

An ordinance providing for a supply of water to the city of Danville and its inhabitants, authorizing the Danville Water Company to construct and maintain water works, contracting with said company for a supply of water for public use, and giving said city an option to purchase said works.

Be it ordained by the city council of the city of Danville in manner following—that is to say:

1. The privilege is hereby granted to the Danville Water Company, a corporation duly organized and existing under the laws of the State of Illinois, and to its successors and assigns, for thirty years from the passage of this ordinance, to construct and maintain within and near the city of Danville, water works for supplying the said city and the inhabitants thereof and of the adjacent municipalities and territory with water for public and private uses, and to use the streets, alleys, sidewalks and public grounds, and the rivers, streams and bridges of the city of Danville, within its present and future corporate limits, for placing, taking up and repairing mains, hydrants and other structure and devices requisite for the service of water.

2. The source of water supply shall be the North fork of the Vermilion river at a point above the present sewage of the city of Danville, north of Fairchild street. The pump-house shall be of stone or brick, of ample size to accom-*o*date the machinery of the said water company, and there shall be two pumping engines of modern and approp-iate style and good efficiency, having an aggregate pumping capacity of four millions gallons of water in twenty-four hours. There shall be a stand pipe as part of the water-works system, not less than one hundred and fifty feet high. All the mains used in the said construction shall be tested at their place of manufacture, before being laid, under a pressure of three hundred pounds to the square inch, and they shall be of su*t*iable size to furnish an abundant supply of water for present and future requirements. The

fire-hydrants rented by said city, as hereinafter stated, shall be of modern and approp-iate style and good efficiency, with frost jacket, and with double delivery, fitted to connect with the hose coupling now in use by the fire department of said city. Written notice being given by said company to said city of Danville, there shall be a test of the power and capacity of said water works on their completion, when they shall throw from separate hydrants in the business portion of said city six simultaneous fire streams through a fifty-feet section of hose and a one-inch nozzle to a height of one hundred feet, and when they shall throw at another time from separate hydrants in other portions of the said city four simultaneous effective fire streams.

8 3. The said water company shall commence in good faith the construction of said water works within sixty days from the passage and approval of this ordinance, and shall have in successful operation at least eight miles of water mains in said city in the month of September, in the year 1883, and shall have the said water works fully completed, with ten miles of water mains in said city, in the month of December, in the year 1883. The lines of water mains shall be so located and laid as to afford fire protection to the several wards, there being no less than one mile of mains in each ward.

4. All mains shall be located and laid as not to interfere unnecessarily with any pipes, mains, conduits and sewers existing at the time of such location and laying. There shall be no unreasonable or unnecessary obstruction of the streets, alleys, sidewalks or public grounds of the said city by said water company in constructing the said works or in placing, taking up or repairing any mains, hydrants or other structures or devices requisite for the service of water, and the said water company, after using the said streets, alleys, sidewalks and public grounds, shall restore them, within a reasonable time, as nearly as practicable to their former condition, and shall hold the city harmless from any and all damages arising from negligence or mismanagement of said water company or its employees in constructing, extending or operating said works. In all street excavations the said water company shall keep red danger lights burning at night along line of the same, at least one light to every one hundred and fifty feet, and shall erect and maintain sufficient barricades at the ends of said excavations and at all streets and alleys where they cross said excavations. If the said city shall change the surface of any street or alley in which said water company shall have laid a main, and if such change shall exceed one foot, and if the said water company shall relay its main on account of such change, then the said city shall reimburse to the said water company the actual cost thereof.

5. If at any time it shall appear that the said water company, by extending its mains, will derive a steady additional revenue of not less than one hundred dollars per annum for every three hun-

9 dred feet of such extension, either from responsible private consumers, secured by written agreement, or from the rental of public fire-hydrants upon the terms hereinafter stated, then the

city council may by ordinance require the said water company to make such extension without unnecessary delay. But at the expiration of thirty years from the passage and approval of this ordinance, all rights of said city of requiring extensions shall cease, unless the rights, privileges and contract hereby granted and made shall have been renewed.

6. The said water company shall not charge to consumers during the continuance of the franchises granted by this ordinance exceeding the following maximum annual rates. But it shall have the right, at its will at any time, to insert a meter into the service pipe of any consumer, and to supply him at meter rates:

Banks, with one basin	$10.00
Bakery, each oven	$10.00 to 30.00
Barber shop, first chair	6.00
Barber shop, each additional chair	3.00
Bath, with heating apparatus, private	5.00
Bath, without heating apparatus, private	4.00
Bath, in boarding-house or hotel, first tub	8.00
Bath, in boarding-house or hotel, each additional tub	4.00
Bath, public, not less than	12.00
Brewery, per barrel brewed	.05
Billiard saloon, each table	4.00
Boarding-house, per room (no license less than $10.00)	1.50
Book-bindery, not less than	10.00
Brick-work, per 1,000 laid	.10
Brick yard, each gang of hands	25.00
Butcher shop, steam extra	10.00
Candy manufacturers	$15.00 to 30.00
Cigar manufacturers (no license less than $10.00), per hand.	2.00
Confectioners	$10 to 30.00
Cow-, each	2.00
Distilleries, for each barrel distilled	.10
10 Dyeing and scouring	$10.00 to 30.00
Forge, first fire	5.00
Forge, each additional fire	2.00
Fountain, six months (running not more than six hours per day) according to the size of jet	$12.00 to 50.00
Hall and theatres	12.00 to 50.00
Horse, one, including washing carriage	4.00
Horse, each additional	2.00
Horse, for private stable, not less than	3.00
Hotel, per room	Special
Ice-cream saloon	$10.00 to 20.00
Laundry	24.00 to 100.00
Office or sleeping rooms	5.00 to 10.00
Oyster saloons	10.00 to 20.00
Printing office, six hands or less (engine extra)	12.00
Printing office, each additional hand	1.50
Photograph galleries	10.00 to 15.00
Plastering, per square yard	.00½

Residence, occupied by one family, for domestic use, one to three rooms	5.00
Residence, each additional room	1.00
Restaurant	12.00 to 20.00
Saloons	10.00 to 30.00
Sprinkling, private garden ¾ hose, ⅛ nozzle, first fifty yards, per square yard	.04
Sprinkling, all over fifty yards, per square yard	.02
Sprinkling carts, per month	Special
Sprinkling sidewalk to center of street, ¾ hose, ⅛-inch nozzle, 11½ hours per day (no license less than $5.00), per front foot	.10
Stable, livery, board, or sale, six horses or less, including carriage-washing	12.00
Stable, each additional stall	1.50
Steam boilers, rated per horse-power, from, one to 11 ten horse power (working ten hours per day)	4.00
Steam boilers, each additional up to twenty	3.00
Steam boilers, over twenty	Special
Stone-work, per perch	.07
Stores and shops	8.00 to 20.00
Tenement, (no license less than $6.00) per room	1.50
Tobacco manufacturers, (no license less than $5.00) per hand	1.50
Urinal basins	6.00 to 12.00.
Water-closets, private	5.00
Water-closets, public	10.00
Wash-basins, in dwellings	2.00
Wash-basins, in hotels	3.00

Meter Rates.

100 to 500 gallons per day, per 100 gallons	.05
500 to 1,500 per day, per 100 gallons	.04
1,500 to 3,000 per day, per 100 gallons	.03½
3,000 to 5,000 per day, per hundred gallons	.03
5,000 to 10,000 gallons per day, per 100 gallons	.02½
10,000 or more gallons per day, per 100 gallons	.02

The rates in this section prescribed shall be paid quarterly, except sprinkling rates, which shall be paid for the season.

7. At the expiration of five, ten and twenty years after the completion of said works, and at the expiration of said term of thirty years, and at the expiration of any renewed term thereof, said city shall have the right to purchase the said works with its privileges and property at a fair valuation, to be ascertained as follows: In the event said city and said water company shall fail to agree on the price three disinterested appraisers of good intelligence, not residents of the county of Vermilion, shall be chosen and sworn to determine the value thereof. One to be appointed by the said city, one by the said water company, and the third by the two so appointed. When said three persons shall have been so chosen, and before

they determine said value the said city and the said water company shall each at their option have the right to call
12 non-resident experts, not exceeding three in behalf of each party, to give testimony under oath before said three appraisers as to such value. The said three appraisers shall then proceed to determine such value, and in so doing they shall take into consideration the productive value of the said water works, rights, privileges and property. And in the event there being no existing fire-hydrant contract with said city at the date of such appraisement, the last existing contract shall be included in the estimated productive value, as though still in existence. When the three or their majority shall have made an award in writing, ten per centum shall be added to the amount thereof; provided, the appraisal be made at the expiration of five years, but no percentum shall be added to the ascertained value of said property after the first period of five years. And the said city shall then have the option of refusing to pay after such award shall have been made, or of paying in cash to said water company within three months from the date of such award, the amount thereof and the said additional ten per centum thereon. If the said city shall refuse to purchase as aforesaid, it shall pay the necessary expenses incurred in making of said award. The said city shall, in such purchase, assume and perform all unfinished contracts made by said water company for furnishing water, and shall assume and pay all debts and obligations of said company, not exceeding in amount the said purchase-money to be paid by said city. And all sums so paid shall be in part discharge of said purchase-money. But if said city shall determine to avail itself of this right to purchase, it shall, in all cases, give written notice to the said water company of such determination, at least one year before the expiration of said privilege, or before the other appointed dates of purchase.

8. In consideration of the benefits which will be derived by the said city and its inhabitants from the construction and operation of the said water works, and in further consideration of the water supply hereby secured for public uses, and as the inducement to said water company to accept the provisions of this ordinance and contract, and to enter upon the construction of said water works, the
13 rights and privileges hereby granted to and vested in said water company shall remain in force and effect for thirty years from the passage of this ordinance; and for the same consideration and as the same inducement, the city of Danville hereby rents of the Danville Water Company for the uses hereinafter stated, one hundred fire-hydrants of the character hereinafter described, and for and during the term of thirty years from passage of this ordinance, and agrees to locate them promptly along the line of the street mains, on demand of said water company, and on submission by it to said city of a plan of the location of said street mains, and agrees to use the said hydrants carefully and to pay said water company for any injury which may happen to any of them when used by any officer, servant or member of the fire department of said city, and agrees to pay rent for said one hundred hydrants at the rate of

seventy-five dollars each per year, and agrees to pay during the unexpired term of said ordinance and privilege, for any additional fire-hydrants which city may hereafter locate at the rate of sixty-two and fifty one-hundredths dollars each, per year, for the next forty additional hydrants, and for all fire-hydrants in excess of one hundred and forty at the rate of fifty dollars each, per year; all of which sum shall be paid by said city to said water company, beginning from the dates when each of such hydrants shall be put into successful operation, in quarter-yearly installments on the first days of February, May, August and November of each year, and terminating upon the expiration of said term of thirty years, or upon the purchase of said works and their privileges and property by the said city.

9. The fire-hydrants rented by the said city of the said water company shall be used only for the extinguishment of fires, and shall constantly furnish effective fire streams without the aid of portable engines, and flushing gutters and sewers through a fire-nozzle. In flushing, no one hydrant shall be used exceeding ten minutes in one week, nor shall more than one hydrant opening be turned on at the same time, nor shall any flushing be done during the existence of a fire or without notice to the water company.

10. The said water company shall constantly keep all fire-
14 hydrants rented of it by said city supplied with water for fire service, and shall maintain them in effective working order. The chief of the fire department of said city, or in his absence, the officer in charge thereof, shall have charge and control of said fire-hydrants, and may at any time cause such hydrants to be inspected, and if on, such inspection any of said hydrants are to be found out of working order, he shall forthwith notify said water company in writing, specifying the hydrant or hydrants out of working order, and shall also report to the city council the date of such examination and the result thereof and his subsequent action in the premises. And in case any hydrant shall remain out of repair for one week or more after the said water company shall have been so notified in writing, the said city shall be entitled to deduct from said hydrant-rental account, the sum of ten dollars per week so long (as) such hydrant is not in working order: Provided, that the total amount so deducted shall not exceed double the yearly rental of such hydrant or hydrants. And in case that the said water company, after said water works have been completed and in successful operation, shall suffer a suspension of the supply for both domestic and fire purposes exceeding thirty days, then in that case said water company shall forfeit all privileges hereby granted, unless such suspension shall have been caused by circumstances beyond the control of the said water company.

11. The said water company or assigns, in consideration of said city renting such number of fire-hydrants, hereby agree to gratuitously furnish and erect a combined spray and drinking fountain for man and beast, flowing twelve hours *per diem*, (and not exceeding two thousand gallons *per diem*), on the public square in said city; and also to furnish free, water for said fountain, and in addi-

tion thereto water for two additional drinking fountains, flowage not to exceed one thousand gallons each *per diem*, fountains to run except during freezing weather, also water free for all city offices and quarters of fire department situated on lines of water mains in said city, (for drinking and washing purposes), for and during the term and continuance of this privilege and ordinance. Whenever the
15 city council shall decide to erect additional public drinking fountains for man and beast, such fountains shall be located on the lines of water mains at such point or points as the city council may designate, the annual rental of such additional fountains shall be one hundred dollars each per annum, payable quarterly as for fire-hydrants. All public drinking fountains shall be provided with automatic valves, or shall furnish a constant-flowing stream through a small orifice, at the option of said water company or assigns to prevent the waste of water.

12. The said water company shall provide and maintain at its own expense, a telephone or other electric line affording connection between its pump-house and each principal fire-department station, for use during fires, the city to furnish its own instrument.

13. The city shall adopt and enforce ordinances protecting the said water company in the safe and unmolested exercise of these franchises, and against fraud and imposition, and against injury to its property and waste of water by consumers, and the said water company may make and enforce as part of the condition upon which it will supply water to consumers, all needful rules and regulations not inconsistent with law.

14. This ordinance shall become binding as a contract on the said city of Danville in the event that the said Danville Water Company shall, within ten days from the passage and publication of this ordinance, file with the city clerk of said city its written acceptance of the terms, obligations and conditions of this ordinance, and upon such acceptance this ordinance shall constitute the contract, and shall be the measure of the rights and liabilities of the said city and the said water company.

15. All ordinances and parts of ordinances inconsistent with the provisions of this ordinance, and especially the ordinance entitled: "An ordinance to provide for the construction and maint*ai*nance of water works for the supply of water to the city of Danville, Illinois, and its inhabitants, and for the prevention and extinguishment of fires in said city," passed and approved April 22, 1882, are
16 hereby repealed and this ordinance shall take effect from and after its passage and publication.

Passed and approved this 9th day of November, A. D. 1882.

L. T. DICKASON, *Mayor.*

Attest: A. C. FREEMAN,
[SEAL.] *City Clerk.*

And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance; and afterwards, on the first

day of May, A. D. 1883, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant, and was duly published according to law on the eight day of June, A. D. 1883; which said ordinance is in the words and figures following, to wit:

An ordinance to amend and carry out an ordinance of the city council of the city of Danville entitled "Providing for a supply of water to the city of Danville and its inhabitants, authorizing the Danville Water Company to construct and maintain water works, contracting with said company for a supply of water for public use, and giving said city an option to purchase said works," passed and approved November 9th, A. D. 1882.

Whereas, the Danville Water Company has commenced in good faith the construction of its water works within sixty days from the passage and approval of an ordinance of the city council of the city of Danville entitled "An ordinance providing for a supply of water to the city of Danville and its inhabitants; authorizing the Danville Water Company to construct and maintain water works; contracting with said company for a supply of water for public use, and giving said city an option to purchase said works," passed and approved November 9th, A. D. 1882, which commencement in good faith of said construction is hereby acknowledged; and

Whereas, the Danville Water Company has submitted to the city of Danville a plan of the location and size of its street mains,
17 and the city of Danville has thereupon, on demand of said water company, located on the said street mains the one hundred hydrants rented by the said city of Danville of the said water company; and

Whereas, the Danville Water Company proposes, in addition to connecting its works for a water supply with the North fork of the Vermilion river at a point above the present sewage of the city of Danville, north of Fairchild street, to dig a well or wells north of Fairchild street, in the vicinity of its pumping station, and to utilize for water supply the water pumped by it from such well or wells so dug:

Now, for amendment of said ordinance in conformity with the foregoing, and for the purposes of carrying out the said ordinances:

Be it ordained by the city council of the city of Danville, in the manner following—that is to say:

1. That section two of an ordinance of the city of Danville, entitled, "An ordinance providing for a supply of water to the city of Danville and its inhabitants; authorizing the Danville Water Company to construct and maintain water works; contracting with said company for a supply of water for public use, and giving said city an option to purchase said works," passed and approved November 9th, 1882, which reads as follows:

"The source of the water supply shall be the North fork of the Vermilion river, at a point above the present sewage of the city of Danville, north of Fairchild street. The pump-house shall be of

stone or brick, of ample size to accommodate the machinery of the said water company, and there shall be two pumping engines of modern and appropriate style and good efficiency, having an aggregate pumping capacity of four million gallons of water in twenty-four hours. There shall be a stand pipe as a part of the water-works system, not less than one hundred and fifty feet high. All the mains used in the said construction shall be tested at their place of manufacture before being laid, under a pressure of three hundred pounds to the square inch, and they shall be of suitable size to fur-
18 nish an abundant supply of water for present and future requirements. The fire-hydrants rented by the said city, as hereinafter stated, shall be of modern and appropriate style and good efficiency, with frost jackets, and with double delivery, fitted to connect with hose couplings now in use by the fire department of said city. Written notice being given by said company to said city of Danville, there shall be a test of the power and capacity of said water works on their completion, when they shall throw from separate hydrants in the business portion of said city six simultaneous fire streams through a fifty-feet section of hose and a one-inch nozzle to a height of one hundred feet, and when they shall throw at another time from separate hydrants in other portions of said city four simultaneous effective fire streams."

Be, and the same is, hereby amended to read as follows:

2. The Danville Water Company shall take its water supply from the North fork of the Vermilion river at a point above the present sewage of the city of Danville, north of Fairchild street, or from a well or wells dug by it north of Fairchild street, in the vicinity of its pumping station, or from North fork and such well or wells, changing from one to the other, or to both sources of supply, from time to time at its discretion. The pump-house shall be of stone or brick, of ample size to accommodate the machinery of the said the water company, and there shall be two pumping engines of modern and appropriate style and good efficiency, having an aggregate pumping capacity of four million gallons of water in twenty-four hours. There shall be a stand pipe as a part of the water-works system, not less than one hundred and fifty feet high. All the mains used in the said construction shall be tested at their place of manufacture before being laid, under a pressure of three hundred pounds to the square inch; and the location and size of those permitted to be laid may be as follows, the said water company having the right to select the side of the street:

From the pumping station to the intersection of Lincoln and Denmark streets, 14 inches diameter.

In Woodbury street, from Franklin to Vermilion streets, 6 inches diameter.

19 In Griggs street, from Junction avenue, to Collett street, 6 inches diameter.

In Lincoln street, from Denmark to Harmon avenue, 14 inches diameter.

In Williams street, from Harmon avenue to Vermilion street, 10 inches diameter.

In Williams street, from Section to Junction avenue, 6 inches diameter.

In Ann street, from Harmon avenue to Gilbert street, 4 inches diameter.

In Seminary street, from Grant street to Harmon avenue, 6 inches diameter.

In Madison street, from Mill street to Harmon avenue, 4 inches diameter.

In Madison street, from Harmon avenue to Vermilion street, 10 inches diameter.

In Madison street, from Vermilion to Depot streets, 6 inches diameter.

In Harrison street, from Mill to Pine streets, 4 inches diameter.

In North street, from Robinson to Depot streets, 4 inches diameter.

In Main street, from Pine to Franklin streets, 8 inches diameter.

In Williams street, from Vermilion to Section streets, 8 inches diameter.

In Main street, from Franklin to Gray streets, 10 inches diameter.

In Main street, from Gray to Collett streets, 6 inches diameter.

In South street, from Vermillion to Buchanan streets, 6 inches diameter.

20 In Chestnut street, from College to Elizabeth streets, 4 inches diameter.

In Grant street, from Lincoln to Seminary streets, 6 inches diameter.

In Mill street, from Madison to Harrison streets, 6 inches diameter.

In Harmon avenue, from Lincoln to Williams street, 14 inches diameter.

In Harmon avenue, from Williams to Mansson streets, 10 inches diameter.

In Robinson street, from Harrison to North street, 4 inches diameter.

In Gilbert street, from Williams to Madison streets, 6 inches diameter.

In Pine street, from Madison to Main streets, 8 inches diameter.

In Oak street, from Seminary to Madison streets, 4 inches diameter.

In Franklin street, from Woodbury to Williams streets, 4 inches diameter.

In Franklin street, from Williams to Madison streets, 6 inches diameter.

In Franklin street, from Madison to Main streets, 4 inches diameter.

In Walnut street, from Williams to Main streets, 4 inches diameter.

In Vermilion street, from Woodbury to Williams street, 4 inches diameter.

In Vermilion street, from Williams to Madison streets, 8 inches diameter.

In Vermilion street, from Madison to Main streets, 10 inches diameter.

In Vermilion street, from Main to South streets, 6 inches diameter.

In Hazel street, from Williams to Madison streets, 4 inches diameter.

21 In Hazel street, from Madison to Main streets, 6 inches diameter.

In Hazel street, from Main to South streets, 4 inches diameter.

In Hazel street, from South to Green streets, 6 inches diameter.

In Jackson street, from Williams to Madison streets, 6 inches diameter.

In Jackson street, from Madison to North streets, 4 inches diameter.

In Depot street, from Madison to Main streets, 6 inches diameter.

In Gray street, from Main to South street, 4 inches diameter.

In College street, from South to Chestnut streets, 6 inches diameter.

In Elizabeth street, from South to Chestnut streets, 6 inches diameter.

In Elizabeth street, from Chestnut to Wayne streets, 4 inches diameter.

In Junction avenue, from Williams to Griggs streets, 6 inches diameter.

In Buchanan street, from Main to South streets, 4 inches diameter.

In Collett street, from Main to Griggs streets, 4 inches diameter.

The fire-hydrants rented by said city, as hereinafter stated, shall be of modern and appropriate style and good efficiency, with frost jacket, and with double delivery, fitted to connect with hose couplings now in use by the fire department of said city. Said fire-hydrants so rented by said city shall be set by the said water company on whatever corner of the intersection it may select, but in all cases on the side of the street nearest to the main with which they are to connect; and they are hereby located as follows:

1. At the intersection of Woodbury and Franklin streets.

22 2. At the intersection of Woodbury and Walnut streets.

3. At the intersection of Woodbury and Vermilion streets.

4. At the intersection of Clay and Franklin streets.

5. At the intersection of Tincher and Denmark streets.

6. In Franklin street, at the north side of the right of way of the I. B. & W. railway.

7. In Vermilion street, at the south side of the right of way of the I. B. & W. railway.

8. At the intersection of Lincoln and Denmark streets.

9. At the intersection of Lincoln and Sheridan streets.

10. At the intersection of Lincoln and Grant streets.

11. At the intersection of Lincoln and Chandler streets.

12. At the intersection of Williams street and Harmon avenue.

13. At the intersection of Williams and Robinson streets.

14. At the intersection of Williams and Gilbert streets.

15. At the intersection of Williams and Oak streets.
16. At the intersection of Williams and Franklin streets.
17. At the intersection of Williams and Walnut streets.
18. At the intersection of Williams and Vermilion streets.
19. At the intersection of Williams and Hazel streets.
20. At the intersection of Williams and Jackson streets.
21. At the intersection of Williams and Depot streets.
22. At the intersection of Williams and Section streets.
23. At the intersection of Wellington and Junction streets.
24. At the intersection of Wellington and Colcett streets.
25. At the intersection of Kimber and Grant streets.
26. In Harmon avenue, at the north side of the right of way of the I. B. & W. railway.
27. At the intersection of Cherry and Jackson streets.
28. In Franklin street, half way between Williams and Seminary streets.
29. In Vermilion street, half way between Williams and Seminary streets.

23

30. At the intersection of Ann and Gilbert streets.
31. At the intersection of Seminary and Grant streets.
32. At the intersection of Seminary street and Harmon avenue.
33. At the intersection of Seminary and Gilbert streets.
34. At the intersection of Seminary and Franklin streets.
35. At the intersection of Seminary and Vermilion streets.
36. At the intersection of Seminary and Jackson streets.
37. At the intersection of Seminary and Collett streets.
38. At the intersection of Madison street and Harmon avenue.
39. At the intersection of Madison and Robinson streets.
40. At the intersection of Madison and Gilbert streets.
41. At the intersection of Madison and Pine streets.
42. At the intersection of Madison and Franklin streets.
43. At the intersection of Madison and Walnut streets.
44. At the intersection of Madison and Vermilion streets.
45. At the intersection of Madison and Hazel streets.
46. At the intersection of Madison and Jackson streets.
47. At the intersection of Madison and Depot streets.
48. At the intersection of Herman and Collett streets.
49. At the intersection of Harrison and Franklin streets.
50. At the intersection of Harrison and Walnut streets.
51. At the intersection of Harrison and Vermilion streets.
52. At the intersection of Harrison and Hazel streets.
53. At the intersection of Harrison and Jackson streets.
54. At the intersection of Harrison and Depot streets.
55. In Vermilion street, at the corner of the alley between Harrison and North streets.
56. At the intersection of North and Robinson streets.
57. At the intersection of North and Pine streets.
58. At the intersection of North and Franklin streets.
59. At the intersection of North and Walnut streets.
60. At the intersection of North and Vermilion streets.
61. At the intersection of North and Hazel streets.

62. At the intersection of North and Jackson streets.
63. At the intersection of North and Depot streets.
64. At the intersection of North street (extended) and Collett street.
65. In Franklin street, at the corner of the alley between North and Franklin streets.
66. In Walnut street, at the corner of the alley between North and Main streets.
67. At the intersection of Van Buren alley and Vermilion street.
68. At the intersection of Van Buren alley and Hazel street.
69. At the intersection of Van Buren alley and Depot street.
70. At the intersection of Main and Pine streets.
71. In Main street, half way between Franklin and Pine streets.
72. At the intersection of Main and Franklin streets.
73. At the intersection of Main and Walnut streets.
74. In Main street, at the corner of the First national bank.
75. At the post-office corner.
76. At the intersection of Main and Hazel streets.
77. In Main street, at the corner of the alley between Hazel and Jackson streets.
78. At the intersection of Main and Jackson streets.
79. At the intersection of Main and Depot streets.
80. At the intersection of Main and Gray streets.
81. At the intersection of Main and McDonald streets.
82. At the intersection of Main and Park streets.
83. At the intersection of Main and Fremont streets.
84. At the intersection of Main and Clark streets.
85. At the intersection of Main and Buchanan streets.
86. At the intersection of Main and Collett streets.
87. At the intersection of South and Vermilion streets.
88. At the intersection of South and Hazel streets.
89. At the intersection of South and Jackson streets.
90. At the intersection of South and Gray streets.
91. At the intersection of South and Park streets.
92. At the intersection of South and Elizabeth streets.
93. At the intersection of South and Buchanan streets.
94. At the intersection of Green and Hazel streets.
95. At the intersection of Green and College streets.
96. At the intersection of Chestnut and College streets.
97. At the intersection of Chestnut and Park streets.
98. At the intersection of Chestnut and Elizabeth streets.
99. At the intersection of Pearl and Elizabeth streets.
100. At the intersection of Wayne and Elizabeth streets.

Written notice being given by said company to said city of Danville, there shall be a test of the power and capacity of said water works on their completion, when they shall throw from separate hydrants in the business portion of said city, six simultaneous fire streams, through a fifty-feet section of hose and a one-inch nozzle, to the height of one hundred feet, and when they shall throw at another time from separate hydrants in other portions of the said city four simultaneous effective fire streams: Provided, however, that

nothing in this section shall be so construed to operate against the full force and effect of section 9 and that part of section 2 of the original ordinance which provides for the laying of mains of suitable size to furnish an abundant supply of water for present and future requirements.

2. This ordinance shall become binding as a part of the contract existing between the city of Danville and the Danville Water Company in the event that said water company shall, within ten days from the passage and publication of this ordinance file with the city clerk of said city its written acceptance of it.

3. All ordinances and resolutions and parts of ordinances or resolutions in conflict herewith are hereby repealed, and this ordinance shall take effect at its passage and publication.

Passed by city council, May 1st, A. D. 1883. Approved June 2d, 1883.

L. T. DICKASON, *Mayor.*

Attest:

[SEAL.] A. C. FREEMAN, *City Clerk.*

26 And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 7th day of June, 1883, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the 8th day of June, A. D. 1883; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for an extension of the pipe system of the Danville Water Company, contracting with it for an additional public fire-hydrant, and locating the public free fountain.

"Be it ordained by the city council of the city of Danville, in manner following, that is to say:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to extend its pipe system by laying a six-inch water main from the intersection of Griggs street and Junction street northwardly seven hundred feet toward the car shops of the Chicago and Eastern Illinois Railroad Company; and that the city of Danville further requests and hereby requires the Danville Water Company to put up at the end of the said extension hereinbefore required to be made one additional fire-hydrant of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882; and the city of Danville hereby rents of the Danville Water Company the said additional fire-hydrant for the uses and subject to the conditions stated in the said ordinance of November 8th, 1882, for and during the term of thirty years from the passage of this ordinance, and agrees and binds itself to pay therefor to the Danville Water Company at the rate of sixty-two and fifty-hundre-ths dollars per annum, begin-ing

from the date when such hydrant shall be put in successful operation, in quarter-yearly installments on the first day of February, May, August and November of each year, and terminating
27 upon the expiration of the said term of thirty years, or upon the purchase of the said works and their privileges and property by the said city.

"SECTION 2. This ordinance shall become binding as a contract on the said city of Danville in the event that the Danville Water Company shall within ten days from the passage and publication of this ordinance file with the city clerk its written acceptance of it.

"SECTION 3. The Danville Water Company shall erect the free public fountain provided for by the eleventh section of the said ordinance of November 9th, 1882, in the center of the public square in said city of Danville.

"Passed and approved this 7th day of June, A. D. 1883.

"(Signed) L. T. DICKASON, *Mayor.*

"Attest: A. C. FREEMAN, *City Clerk.*"

And plaintiff avers that within ten days from the passage and publication of last said named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the seventh day of August, A. D. 1884, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the 15th day of August, A. D. 1884; which said ordinance is in the words and figures following, to wit:

An ordinance providing for extending the pipe system of the Danville Water Company and renting of it two additional hydrants.

Be it ordained by the city council of the city of Danville in manner following—that is to say:

1. That the city of Danville requests and hereby requires the Danville Water Company to extend its pipe system along
28 North street to reach the places on said street hereinafter described, and that the city of Danville further requests and hereby requires the Danville Water Company to put two additional fire-hydrants of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882; and in consideration of the compliance, by the Danville Water Company, with the foregoing requests and requirements the city of Danville hereby rents of the Danville Water Company, the said two additional hydrants located in the following-described places, to wit:

No. 102. At the intersection of North and Hayes streets.

103. At the intersection of Harrison and Mill streets.

And the city of Danville agrees and binds itself to pay therefor to the Danville Water Company for the use*w* and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the term of thirty years from the passage of this ordinance,

at the rate of sixty-two dollars and fifty cents per hydrant per annum, beginning from the date when such hydrants shall respectively be put into successful operation, in quarter-yearly installments, on the first day of February, May, August and November of each year, and terminating upon the expiration of the said term of thirty years or upon the purchase of said works and their privileges and property by the said city.

2. This ordinance shall become binding as a contract, of the said city of Danville in event that the Danville Water Company shall, within ten days from the publication of this ordinance, file with the city clerk its written acceptance of it.

Passed and approved August 7th, A. D. 1884.

L. T. DICKASON, *Mayor.*

And plaintiff avers that within ten days from the passage and publication of last said named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the first day of April, A. D. 1886, there
29 was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the ninth day of April, A. D. 1886; which said ordinance is in the words and figures following, to wit:

An ordinance providing for the extension of the pipe system of the Danville Water Company and renting of it four additional fire-hydrants.

Be it ordained by the city council of the city of Danville, Illinois, in the manner following, that is to say:

1. That the city of Danville requests and hereby requires the Danville Water Company to extend its pipe system, by laying the following-described water mains: A four-inch main in Wayne street between the Wabash hospital and Buchanan street, a four-inch main in Oak street, between Seminary and Ann streets; a six-inch main in Buchanan street between Wayne and Commercial streets, a six-inch main in Collett street, between Griggs and the first alley north of the I. B. & W. railway tracks. And hereby requires the Danville Water Company to put up at the places hereinafter named, four additional fire-hydrants of the kind required by the water-works ordinance of the city of Danville, passed and approved on November 9th, 1882; and in consideration of the compliance of the Danville Water Company with the foregoing requests and requirements, the city of Danville hereby rents of the Danville Water Company the four additional fire-hydrants, to wit:

No. 104. At the intersection of Oak and Ann streets.

No. 105. At the intersection of Buchanan and Commercial streets.

No. 106. At the intersection of Junction avenue and the I. B. & W. railway tracks.

No. 107. At the intersection of Collett street and first alley north of I. B. & W. railway track.

And the city of Danville agrees and binds itself to pay therefor to the Danville Water Company for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the term of thirty years from the passage of this
30 ordinance, at the rate of sixty-two dollars and fifty cents per hydrant per annum, beginning with the date when said hydrants shall respectively be put up and connected with the water works of the said water company, in quarter-yearly installments, on the first days of February, May, August and November of each year, subject to the termination by the purchase of the said works by the city of Danville.

2. This ordinance shall become binding as a contract on the city of Danville, in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance of it.

Passed and approved this first day of April, A. D. 1886.

JOHN BEARD, *Mayor.*

Attest: A. C. FREEMAN, *City Clerk.*

And plaintiff av[illegible]t within ten days from the passage and publication of said last-[illegible]ned ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 19th day of June, A. D. 1890, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the 24th day of June, A. D. 1890; which said ordinance is in the words and figures following, to wit:

An ordinance providing for extending the water mains of the Danville Water Company and renting of it five additional hydrants.

Be it ordained by the city council of the city of Danville, Illinois, in the manner following—that is to say:

1. That the city of Danville requests and hereby requires the Danville Water Company to extend its water mains by laying a four-inch main in Vermilion street from Woodbury to English street, and by laying a four-inch main in Franklin street from Woodbury to Townsend avenue, and that the city of Danville hereby requires the said water company to put up at the places hereinafter named five additional fire-hydrants of the kind
31 required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882, and in consideration of the compliance by the Danville Water Company with the foregoing requests and requirements the city of Danville hereby rents from the Danville Water Company the said five additional fire-hydrants, to wit:

No. 108. At the intersection of Vermilion and Fairchild streets.

No. 109. At the intersection of Vermilion street and Townsend avenue.

No. 110. At the intersection of Vermilion street and English street.

No. 111. At the intersection of Franklin street and Fairchild street.

No. 112. At the intersection of Franklin street and Townsend avenue.

And the city of Danville agrees and binds itself to pay therefor to the Danville Water Company for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the unexpired term of thirty years from November 9th, 1882, and from the date of the passage of this ordinance, at the rate of sixty-two dollars and fifty cents ($62.50) per hydrant per annum, beginning with the date when such hydrants shall respectively be put up and connected with the water works of the said water company, in quarter-yearly installments, on the first day of February, May, August and November of each year, subject to the termination by the purchase of said water works by the city of Danville.

2. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance thereof.

Passed and approved June 19, 1890.

W. R. LAWRENCE, *Mayor.*

Attest: JOSEPH SHATZ, *City Clerk.*

And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

32 And afterwards, on the twentieth day of August, A. D. 1890, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the 23d day of August, A. D. 1890; which said ordinance is in the words and figures following, to wit:

An ordinance providing for extending the water mains of the Danville Water Company and renting of it three additional hydrants.

Be it ordained by the city council of the city of Danville, Illinois, in the manner following—that is to say:

1. That the city of Danville requests and hereby requires the Danville Water Company to extend its water mains by laying a four-inch water main in Hazel street, from Davis street to Fairchild street, and that the city of Danville hereby requires the said water company to put up at the places hereby named three additional fire-hydrants of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882, and in consideration of the compliance of the Danville Water Company with the foregoing requests and requirements the city of Danville

hereby rents of the Danville Water Company the said three additional fire-hydrants, to wit:

No. 113. At crossing of Clay and Hazel streets.

No. 114. At crossing of Woodbury and Hazel streets.

No. 115. At crossing of Fairchild and Hazel streets.

And the city of Danville agrees and binds itself to pay therefor to the Danville Water Company for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the unexpired term of thirty years from November 9th, 1882, and from the date of the passage of this ordinance, at the rate sixty-two dollars and fifty cents ($62.50) per hydrant per annum, beginning with date when said hydrants shall be respectively put up and connected with the water works of the said water company in quarter-yearly installments, on the first day of February,
33 May, August and November of each year, subject to termination by the purchase of said water works by the city of Danville.

2. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance thereof.

Passed and approved August 20th, 1890.

W. R. LAWRENCE, *Mayor.*

Attest: JOSEPH SHATZ, *City Clerk.*

And the plaintiff avers that within ten days from the passage and publication of last said named ordinance plaintiff filed with city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 25th day of September, A. D. 1890, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the — day of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

An ordinance to amend section 1 of an ordinance entitled "An ordinance providing for extending the water mains of the Danville Water Company and renting of it three additional hydrants," passed and approved August 20th, 1890.

1. Be it ordained by the city council of the city of Danville, That section 1 of an ordinance entitled "An ordinance providing for extending the water mains of the Danville Water Company and renting of it three additional hydrants," passed and approved August 25th, 1890, be, and the same hereby is, amended so as to locate fire-hydrant No. 113 at the crossing of Hazel street and the first alley south of the Cleveland, Cincinnati, Chicago and St. Louis railroad, and the said Danville Water Company is hereby authorized and requested to so locate said fire-hy-ants at the above-named
34 point instead of at the crossing of Clay and Hazel streets, as prescribed in said original ordinance.

2. This ordinance to take effect immediately after its passage and approval.

Passed and approved September 25th, 1890.

W. R. LAWRENCE, *Mayor.*

Attest: JOSEPH SHATZ, *City Clerk.*

And afterwards, on the third day of September, A. D. 1891, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then said mayor of said defendant and was duly published according to law on the 18th day of September, A. D. 1891; which said ordinance is in the words and figures following, to wit:

An ordinance providing for extending the water mains of the Danville Water Company and the renting of it three additional fire-hydrants.

1. Be it ordained by the city council of the city of Danville That the city of Danville requests and hereby requires the Danville Water Company of Danville Illinois, to extend its water mains by laying a six-inch water main from a convenient and proper point to the inclosure of the shops of the Chicago and Eastern Illinois Railroad Company at the Danville junction in Danville, Illinois.

2. That the said city of Danville hereby further requires the said Danville Water Company to put at the places hereinafter specified three additional fire-hydrants of the kind required by the ordinance of the said city of Danville relative to the water works of the Danville Water Company, passed and approved on the 9th day of November, 1882, that is to say:

No. 116. One hundred and seventy-two feet east of present main and southeast of hydrant No. 101.

No. 117. One hundred and seventy-two feet west of present main and southwest of hydrant 101.

No. 118. One hundred feet north and two hundred feet east of hydrant No. 101.

35 3. That in consideration of the compliance of the said Danville Water Company with the foregoing requests and requirements, the said city of Danville hereby rents of and *and* agrees to pay to the said Danville Water Company for the said three additional hydrants during the unexpired term of thirty years from the 9th day of November 1882, at the rate of sixty-two dollars and fifty cents ($62.50) annually for each hydrant, payable in quarter-yearly installments, commencing when the said hydrants are respectively in place and ready for use, for the uses and subject to the terms and conditions of said ordinance passed and approved on the 9th day of November, 1882.

4. That the said quarter-yearly payments shall be made the first of February, the first of May, the first of August, and the first of November in each year, and subject to termination by the purchase of the water works aforesaid by the said city of Danville.

5. That this ordinance shall become binding as a contract upon

its passage and approval, and publication: Provided however, that the said Danville Water Company shall, within ten days from the publication hereof, file with the city clerk of the said city of Danville an acceptance in writing of all its terms, conditions and provisions.

Passed September 3d, 1891; approved September 17th, 1891.

JOHN BEARD, *Mayor.*

Attest: JOSEPH SHATZ, *City Clerk.*

And the plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 5th day of November, A. D. 1891, there was duly and lawfully passed by the said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published accor-ing to law on the 13th day of November, A. D. 1891; which said ordinance is in the words and figures following, to wit:

36 An ordinance providing for extending the pipe system of the Danville Water Company and renting of it another fire-hydrant.

Be it ordained by the city council of the city of Danville in manner following—that is to say:

1. That the city of Danville requests and hereby requires the Danville Water Company to extend its pipe system to reach the southwest corner of Madison and Mill streets, and to put up at such corner one additional fire-hydrant of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882, and in consideration of the compliance by the said water company with the foregoing requests and requirements, the said city of Danville hereby rents the said hydrants for the uses and subject to the conditions stated in said ordinance of November 9th, 1882, for and during the unexpired term of thirty years from November 9th, 1882, and agrees and binds itself to pay therefor at the rate of sixty-two dollars and fifty cents ($62.50) per annum, beginning from the date when such hydrants shall be put into successful operation, in quarter-yearly installments, on the first day- of February, May, August and November of each year and terminating upon the expiration of the said term of thirty years from the 9th of November, 1882, or upon the purchase of the said works and their privileges and property by the said city.

2. This ordinance shall become binding as a contract on the city of Danville, in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance of it.

Passed November 5th, 1891; approved November 11th, 1891.

JOHN BEARD, *Mayor.*

Attest:

JOSEPH SHATZ, *City Clerk.*

And the plaintiff avers that within twenty days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

37 And afterwards, on the 20th day of October, A. D. 1892, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of the said defendant and was duly published according to law on the — day of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for extending the water mains of the Danville Water Company and renting of it two additional fire-hydrants.

"Be it ordained by the city council of the city of Danville:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to extend its water mains by laying a six-inch main in Logan avenue from Lincoln street to Kimber street.

"SECTION 2. That the said city of Danville hereby further requires the Danville Water Company to put at the places hereinafter specified two additional fire-hydrants, of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882; said two additional fire-hydrants to be located as follows:

"No. 120. At the intersection of Logan avenue with the alley running into Logan avenue about midway between Lincoln and Kimber streets.

"No. 121. At the intersection of Logan avenue and Kimber street.

"SECTION 3. That in consideration of the compliance of the said Danville Water Company with the foregoing requests and requirements, the said city of Danville hereby rents the said two hydrants for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the unexpired term of thirty years from the 9th day of November, 1882, and agrees and binds itself to pay therefor at the rate of sixty-two dollars and fifty cents (62.50) per annum for each hydrant, beginning from
38 the date when said hydrants are respectively in place and ready for use, in quarter-yearly installments on the first days of February, May, August and November of each year, and subject to termination by the purchase of the water works by the said city.

"SECTION 4. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance thereof.

"Passed and approved this 20th day of October, A. D. 1892.

"JOHN BEARD, *Mayor.*

"Attest:

"JOSEPH SHATZ, *City Clerk.*"

And the plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 21st day of June, A. D. 1894, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the — day of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for extending the water mains of the Danville Water Company, renting of it thirty-one additional fire-hydrants, and contracting with said company for a lower rental per hydrant for said thirty-one additional fire-hydrants, and for all further hydrants to be hereafter rented than has heretofore existed.

"Be it ordained by the city council of the city of Danville, Ill.:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to extend its water mains by laying a six-inch main as follows:

"On Collett street, from Lyford street to Wabash railroad, thence along Wabash railroad to Fairchild street, thence on Fair-
39 child street to Martin street.

"On East Madison street, from Collett street to a street as yet unnamed, which intersects East Madison about half way between Collett street and Stony creek.

"On Gilbert street, from Madison street to English street.

"On Hazel street, from Fairchild street to English street.

"On English street, from Jackson street to Vermilion street.

"On Vermilion street, from English street to Center street.

"On Sherman street, from Lincoln street to Tincher street.

"On Chandler street, from Lincoln street to Tincher street.

"On Kimber street, from Grant street to Sherman street.

"On the streets as yet unnamed (which intersect Williams street about half way between Washington avenue and Section street), from Williams street to Cherry street.

"On Buchanan street, from Commercial street to South street.

"On Buchanan street, from Wayne street to West street.

"On Jackson street, from Williams street to English street.

"On Walnut street, from Woodbury street to Penn. avenue if extended.

"On Wellington street, from Collett street to Kimball street.

"On Lahr street, from Jackson street to Washington street.

"On Walnut street, from Williams street to Davis street.

"On Commercial street, from Buchanan street to Illinois street.

"SECTION 2. That the city of Danville hereby further requires the said Danville Water Company to put at the places hereinafter specified thirty-one additional fire-hydrants, of the kind required by the water-works ordinance of the city of Danville, passed and approved

November 9th, 1882, said thirty-one additional fire-hydrants to be located as follows:

"No. 122. At the intersection of Martin and Fairchild streets.

"No. 123. At the intersection of Kimball and Fairchild streets.

"No. 124. At the intersection of East Madison street and the street as yet unnamed, which intersects East Madison street about
40 half way between Collett street and Stony creek.

"No. 125. At the intersection of Gilbert and Clay streets.

"No. 126. At the intersection of Gilbert and Fairchild streets.

"No. 127. At the intersection of Gilbert street and Townsend avenue.

"No. 128. At the intersection of Gilbert and English streets.

"No. 129. At the intersection of Hazel street and the first alley south of Penn avenue.

"No. 130. At the intersection of Hazel and English streets.

"No. 131. At the intersection of Vermilion and Center streets.

"No. 132. At the intersection of Tincher and Sherman streets.

"No. 133. At the intersection of Chandler and Tincher streets.

"No. 134. At the intersection of Sherman and Kimber streets.

"No. 135. At the intersection of Cherry street with the street as yet unnamed, which intersects Williams street about half way between Washington avenue and Section street.

"No. 136. At the intersection of Buchanan and Green streets.

"No. 137. At the intersection of Buchanan and West streets.

"No. 138. At the intersection of East Main street and Bowman avenue.

"No. 139. At the intersection of East Main and Cottage streets.

"No. 140. On Walnut street, about half way between Williams and Madison streets.

"No. 141. On Hazel street, about half way between Williams and Madison streets.

"No. 142. At the intersection of Jackson and Woodbury streets.

"No. 143. At the intersection of Jackson and Davis streets.

41 "No. 144. At the intersection of Jackson and Sidell streets.

"No. 145. At the intersection of Jackson and English streets.

"No. 146. At the intersection of Walnut street and the first alley south of Townsend avenue.

"No. 147. At the intersection of Walnut street and Penn avenue (if extended).

"No. 148. At the intersection of Walnut and Davis streets.

"No. 149. At the intersection of Kimball and Wellington streets.

"No. 150. At the intersection of Main and Gilbert streets.

"No. 151. At the intersection of Lahr and Washington streets.

"No. 152. At the intersection of Commercial and Illinois streets.

"SECTION 3. That in consideration of the compliance of the said Danville Water Company with the foregoing requests and requirements, the said city of Danville hereby rents the said thirty-one hydrants for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the unexpired term of thirty years from the 9th day of November, 1882, and agrees

and binds itself to pay therefor, at the rate of fifty dollars ($50) per annum for the first nineteen of the said thirty-one hydrants, and at the rate of forty dollars ($40) each per annum for the last twelve of said thirty-one hydrants, beginning from the date when said hydrants are respectively in place and ready for use, in quarter-yearly installments on the first days of February, May, August and November of each year, and subject to termination by the purchase of the water works by the said city.

"SECTION 4. That the rental to be paid said water company by said city for all further fire-hydrants to be hereafter rented, in excess of the thirty-one herein specified, shall be forty dollars ($40) each per annum.

"SECTION 5. Nothing in this ordinance shall operate to effect
42 in any way any of the provisions of the ordinance heretofore passed by the said city relative to the Danville Water Company, except to the extent of the reduction in the rental of the thirty-one hydrants herein rented and all further hydrants to be hereafter rented as hereinbefore provided.

"SECTION 6. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance hereof.

"Passed June 21st, A. D. 1894.

"Approved June 28th, A. D. 1894.

"JAMES SLOAN, *Mayor.*

"Attest:

"R. E. LLOYD, *City Clerk.*"

And the plaintiff avers that within twenty days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 26th day of July, A. D. 1894, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant, and was duly published according to law on the — of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

"An ordinance amending an ordinance entitled 'An ordinance providing for extending the water mains of the Danville Water Company, renting of it thirty-one additional fire-hydrants, and contracting with said company for a lower rental per hydrant for said thirty-one additional fire-hydrants, and for all further hydrants to be hereafter rented, than has heretofore existed,' passed June 21st, 1894.

"Be it ordained by the city council of the city of Danville, Illinois:

"SECTION 1. That the city of Danville requests and hereby
43 requires the Danville Water Company to make the following changes in the extension of the water mains specified in the said ordinance passed June 21st, 1894, to wit:

"For the extension on Jackson street from Sidell street to English street, and on English street from Jackson street to Hazel street, substitute an extension on Walnut street from Penn avenue (if extended) to Center street, and on Center street from Walnut street to Vermilion street.

"For the extension on Gilbert street from Madison street to English street, substitute extension on Gilbert street from Williams street to English street.

"SECTION 2. That the said city of Danville hereby further requires the said Danville Water Company to change the location of hydrant 145 from the intersection of Jackson and English streets as specified in the ordinance passed June 21st, 1894, to the intersection of Walnut street and Center street.

"SECTION 3. This ordinance shall become binding as a contract on the said city of Danville in the event that the Danville Water Company shall, within twenty days from the passage of this ordinance, file with the city clerk its written acceptance hereof.

"Passed July 26th, 1894.

"Approved August 1st, A. D. 1894.

"JAMES SLOAN, *Mayor.*

"Attest: R. E. LLOYD, *City Clerk.*"

And plaintiff avers that within twenty days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the ninth day of August, A. D. 1894, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law
44 on the — day of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

"An ordinance amending an ordinance entitled 'An ordinance providing for extending the water mains of the Danville Water Company, renting of it thirty-one additional fire-hydrants, and contracting with said company for a lower rental per hydrant for said thirty-one additional fire-hydrants and for all further hydrants to be hereafter rented than has heretofore existed,' passed June 21st, 1894.

"Be it ordained by the city council of the city of Danville, Illinois:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to make the following change in the extension of water mains specified in the said ordinance passed June 21st, 1894, to wit:

"For the extension on Wellington street from Collett street to Kimball street, substitute an extension on Clarence street from Collett street to Kimball street.

"SECTION 2. That the said city of Danville hereby further re

quires the Danville Water Company to change the location of hydrant No. 149 from the intersection of Kimball and Wellington streets, as specified in the ordinance passed June 21st, 1894, to the intersection of Kimball and Clarence streets.

"SECTION 3. This ordinance shall become binding as a contract on the said city of Danville in the event that the said Danville Water Company shall, within twenty days from the passage of this ordinance, file with the city clerk its written acceptance hereof.

"Passed August 9th, A. D. 1894.

"Approved August 10th, A. D. 1894.

"JAMES SLOAN, *Mayor.*

"Attest: R. E. LLOYD, *City Clerk.*"

And plaintiff avers that within twenty days from the passage and publication of said last-named ordinance plaintiff filed
45 with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 18th day of October, A. D. 1894, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the —— day of ——, A. D. 18--; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for extending the water mains of the Danville Water Company and renting of it six additional fire-hydrants.

"Be it ordained by the city council of the city of Danville, Illinois:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to extend its mains by laying mains as follows:

"A 6" main on Robinson street from Williams street to Clay street.

"A 6" main on Douglas avenue from Buchanan street to Illinois street.

"A 6" main on South Vermilion street from South street to Green street (if extended).

"A 6" main on Walnut street from Davis street to Woodbury street, and

"A 4" main on Cottage street from E. Main street to Grove street.

"SECTION 2. That the said city of Danville hereby further requires the said Danville Water Company to put up at the places hereinafter specified six additional fire-hydrants, of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882; and six additional fire-hydrants to be located as follows:

"No. 153. At the intersection of Davis and Robinson streets;

"No. 154, at the intersection of Clay and Robinson streets;
46 "No. 155. At the intersection of South Vermilion and Green street (if extended);

"No. 156, at the intersection of Douglas avenue and Illinois street;

"No. 157, at the intersection of Walnut and Clay streets;

"No. 158. At the intersection of Cottage and Grove streets.

"SECTION 3. That in consideration of the compliance of the said water company with the foregoing requests and requirements, the said city of Danville hereby rents the said six hydrants, for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the unexpired term of thirty years from the 9th day of November, 1882, and agrees and binds itself to pay therefor at the rate of forty dollars ($40) per annum for each of the said six hydrants, beginning from the date when said hydrants are respectively in place and ready for use, in quarter-yearly installments on the first days of February, May, August and November of each year, and subject to termination by the purchase of the water works by the said city.

"SECTION 4. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall, within twenty days from the passage of this ordinance, file with the city clerk its written acceptance her-of.

"Passed and approved October 18th, A. D. 1894.

"JAMES SLOAN, *Mayor.*

"Attest: R. E. LLOYD, *City Clerk.*"

And plaintiff avers that within twenty days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And plaintiff avers that after — passage of said several ordinances hereinbefore alleged to have been passed respectively on the 9th day of November, 1882, the 1st day of May, 1883, and the 7th day of June, A. D. 1883, plaintiff duly built the said water works in
47 all respects as required by the provisions of said several ordinances and erected the said several hydrants and did all other things necessary and required of it to be done according to the terms and conditions of said several ordinances, and afterwards, to wit, on the 29th day of September, A. D. 1883, the test provided for in said ordinances was duly made, and said city council of said defendant, on said 29th day of September, A. D. 1883, by an order of resolution duly passed and entered of record, accepted said water works as being in full compliance with the terms and conditions of said ordinance.

And plaintiff further avers that from time to time and after the passage of each of said several ordinances so alleged to have been passed since June 7th, 1883, plaintiff has made said several extensions of its pipes as required by said ordinances respectively and erected and has ever since said erection maintained said hydrants as required by the terms and conditions of said ordinances respectively and has kept the same supplied with water as provided in said several ordinances, and said defendant has had the full, free, and unrestricted use of said hydrants and of said water for the uses

and purposes in said several ordinances mentioned, and on, to wit, the first day of May, A. D. 1895, there *was* erected and in use by said defendant within the corpor- limits thereof, to wit, one hundred (*100*) and fifty-eight (158) of said hydrants, of which number, to wit, one hundred (100) were erected under and by virtue of said ordinances passed November 9th, A. D. 1885, and May 1st, 1886; to wit, one was erected under and by virtue of said ordinance passed June 7th, 1883; to wit, two were erected under said ordinance passed August 7th, 1884; to wit, four were erected under and by virtue of said ordinance passed April 1st, 1886; to wit, five were erected under and by virtue of said ordinance passed June 19th, 1890; to wit, three were erected under and by virtue of said ordinance- passed August 20th, A. D. 1890, and September 25th, 1890; to wit, three were erected under and by virtue of said ordinance passed September 3rd, 1891; to wit, one was erected under and by virtue of said ordinance passed November 5th, 1891; to wit, two were erected under and by virtue of said ordinance passed October 22nd, A. D. 1892; to wit, thirty-one were erected under and by virtue of said several
48 ordinances passed respectively June 21st, A. D. 1894, July 26th, 1894, August 9th, 1894, and, to wit, six were erected under and by virtue of said ordinance passed October 18th, A. D. 1894.

And plaintiff further avers that from and including the first day of May, A. D. 1895, until and including the 31st day of July, A. D. 1895, each of said aforementioned hydrants *were* kept supplied with water by plaintiff in all respects as required by the terms and conditions of said several ordinances, and said defendant had during said time the full, free, and unrestricted use of said hydrants and of said water, as in and by the terms of said ordinance is provided, by means whereof said defendant become liable to pay said plaintiff, to wit, the sum of twenty-six hundred and twenty dollars and sixty-two cents ($2,620.62), on, to wit, the first day of August, A. D. 1895, and being so liable, afterwards, to wit, on the 10 day of August, A. D. 1895, at, to wit, the county aforesaid, undertook and promised to pay the same to the plaintiff when thereunto afterwards requested.

Yet the said defendant, though often requested, has not as yet paid the same or any part thereof, but so to do has refused and still does refuse, to the damage of plaintiff five thousand dollars ($5,000), and therefore it brings its suit, *ect.*

REMY & MANN AND
W. R. LAWRENCE,
Att'ys for Pl'ff.

Filed Oct. 22d, 1895.
M. J. BARGER, *C'lk.*

On the 26th day of October, 1895, the following proceedings were had and entered of record in said court in words and figures following, to wit:

SATURDAY, *Oct.* 26, 1895.

DANVILLE WATER COMPANY
vs.
CITY OF DANVILLE. } 11182. Assumpsit.

On motion of said plaintiff, defendants is ruled by the court to plead herein by next Monday at noon.

49 On the 30th day of October, 1895, there *was* filed in the office of the clerk of said court defendant's pleas to said amended declaration in words and figures following, to wit:

STATE OF ILLINOIS, }
Vermilion County, } *ss*:

In the Circuit Court of said County, to the October Term, A. D. 1895.

DANVILLE WATER COMPANY
vs.
CITY OF DANVILLE. } Assumpsit.

Pleas of Defendant to the Amended Declaration of the Plaintiff.

And the said defendant, The City of Danville, by W. J. Calhoun and G. F. Rearick, its attorneys, comes and defends the wrong and injury when, *ect.*, at, *ect.*, and as to all of the said several supposed promises and undertakings in the said amended declaration mentioned, except as to the sum of nineteen hundred and thirty dollars ($1,930.00), parcel of the said several sums of money in the said amended declaration mentioned, says that it, the said plaintiff, ought not to have or maintain*ed* its aforesaid action thereof against this defendant except as to the sum of nineteen hundred and thirty dollars (1,930.00), parcel, *ect.*, as aforesaid, because it says—

That the said plaintiff at all the times mentioned in its said amended declaration was and now still is engaged in the public business of supplying said city and its inhabitants with water through the means of a distributing plant and pipes and mains laid in the streets of said city under and by virtue of authority granted in and by the said ordinance in said amended declaration mentioned.

That while the said plaintiff was so engaged in said business, viz., on, to wit, the 19th day of January, A. D. 1895, and after the passage and approval of each of the ordinances mentioned in the said amended declaration, the city council of the said city of Danville, as it lawfully might do, under and by virtue of an act of the General Assembly of the State of Illinois approved June 6th, 1891, and in force July 1st, A. D. 1891, entitled—

50 "An act to enable cities, towns, and villiages incorporated under any general or special law of this State to fix the rates and charges for the supply of water furnished by any individual, company, or corporation to any such city, town, or villiage and the inhabitants thereof," as well as under and by virtue of other full, competent, and complete legal authority, duly passed an ordi-

nance prescribing the maximum rates and charges for the supply of water to be furnished by the plaintiff to the defendant on and after the 1st day of May, A. D. 1895; which said ordinance is in the words and figures following, viz:

Ordinance No. 517.

An ordinance prescribing the maximum rates and charges for the supply of water furnished by the Danville Water Company to the city of Danville.

Whereas after a careful comparison of the rates and charges paid by this city for the supply of water to this city for public uses, with the rates and charges paid therefor by other cities similarly situated, it is found that the rates charged by the Danville Water Company, (a corporation organized under the laws of the State of Illinois), and paid by this city to said company for the supply of water furnished by said company to this city for public uses, are unjust, excessive and unreasonable,

And whereas, under and by virtue of an act of the General Assembly of the State of Illinois, approved June 6th, A. D. 1891, and in force July 1st, A. D. 1891, entitled: "An act to enable cities, towns and villages incorporated under any general or special law of this State to fix the rates and charges for the supply of water furnished by any individual, company or corporation to any such city, town or village or the inhabitants thereof," as well as under and
51 by virtue of other full, competent and complete legal authority, the city council of the city of Danville, Illinois, (a municipal corporation organized under and by virtue of the general laws of the State of Illinois) is empowered to prescribe by this ordinance the maximum rates and charges for the said supply of water furnished by said corporation to this city,

And whereas after *the* full investigation of the matter it is believed by the members of this council that the rates and charges hereinafter prescribed are just and reasonable,

Therefore be it ordained by the city council of the city of Danville, Illinois:

SECTION 1. That beginning with the first day of May, A. D. 1895, the rates and charges for the supply of water furnished by the Danville Water Company, a corporation as aforesaid, to the said city of Danville, for public uses, shall be as follows, viz:

For the first one hundred and forty (140) fire-hydrants, now being rented by said city from said company, and for the supply of water furnished by said water company, for public uses, by, in and through said hydrants, for which the said city is now paying said water company, the following rentals, viz: Seventy-five dollars ($75.00) per year, per hydrant, for the first one hundred (100) hydrants; sixty-two and one-half dollars ($62.50), per year, per hydrant for the next twenty-one of said hydrants, fifty dollars ($50.00) per year, per hydrant for the next nineteen (19) of said hydrants, said Danville Water Company shall have and receive from said city of Danville, and said city of Danville shall pay said water company the

uniform rate and charge of fifty dollars ($50.00) per hydrant, per annum, and no more.

And for the next twelve (12) fire-hydrants above the one hundred and forty (140) above mentioned, and which are now rented by said city from said water company, and for the supply of water furnished by said water company for public uses, by, in and through said twelve (12) hydrants, and for all other fire-hydrants now rented or which may be hereafter rented from said company and for the supply of water for public uses, furnished or to be furnished by, in and through said hydrants, said Danville Water Company shall
52 have and receive from said city of Danville, and said city of Danville shall pay said water company, the same rate as is now charged and paid for the same, viz; the rate and charge of forty dollars (40) per hydrant, per annum and no more.

And for the use of water for flushing the public sanitary sewers of the city, such as are now built and connected with the pipes and water mains of said water company, and such as may be hereafter connected, which said water has hitherto been furnished by said water company free of charge, said Danville Water Company shall have and receive, from said city of Danville, and said city of Danville shall pay said water company, at the rate of five cents (.05) per one thousand gallons, and no more.

And for the use of water by, in and through the public drinking fountain now used by said city, and for which said water company is now furnishing water free of charge, said Danville Water Company shall have and receive, and said city shall pay said water company at the rate of five dollars ($5.00) per fountain per annum, and no more.

And for water for any other use for which water is now taken by said city or for which water may be hereafter taken by said city from said water company, for public uses, other than as above specified, said Danville Water Company shall charge said city therefor at the same rates as are at that time charged by said water company to private consumers for the like service, which rate said city shall pay to said water company, therefor, and no more.

SECTION 2. That said city of Danville shall continue to take from said Danville Water Company all the supply of water now taken from it, but shall pay therefor only the rates and charges herein prescribed, all former ordinances and provisions to the contrary notwithstanding, and it is hereby made the duty of the city clerk to notify said water company of that fact by delivering to the superintendent of the water works of said company, in this city, a certified copy of this ordinance within five (5) days after same is signed by the mayor, or shall go into effect without his signature.

SECTION 3. In case said water company shall desire to
53 make application to the circuit court of Vermilion county, Illinois, for the purpose of having the question of the reasonableness of the rates and charges fixed herein, promptly determined, or for the purpose of having such rates and charges reviewed and determined by said circuit court, the corporation counsel is hereby authorized to enter the appearance of this city to such suit or cause

as may be brought therefor, at the February term A. D. 1895 of said court.

Passed January 17th, 1895.

Approved January 19th, A. D. 1895.

JAMES SLOAN,
Mayor of the City of Danville.

Attest: R. E. LLOYD, *City Clerk.*

Which said ordinance was duly deposited in the office of the city clerk of said city, and was afterwards, on, to wit, the 19th day of January, A. D. 1895, duly approved by the mayor of said city, and duly recorded by the city clerk of said city, in all respects as required by law.

And afterwards, within five days after the approval of said ordinance as aforesaid, the said city clerk, on, to wit, the 23d day of January, A. D. 1895, delivered to the superintendant of said plaintiff a certified copy of said ordinance.

And the defendant further avers that the said plaintiff was duly notified of the passage and approval of said ordinance, and also of the fact that said city for the supply of water taken by the said city for public uses, viz., the supply for which the plaintiff now seeks to recover, and which was furnished in manner and form as alleged in said amended declaration, would pay no other or greater sums than those prescribed in the ordinance aforesaid, viz., the sum of fifty dollars per hydrant per annum for the first one hundred and forty (140) of said hydrants, and forty dollars per hydrant per annum for all other hydrants above that number; which said notice
54 was given long before the first day of May, A. D. 1895, and long before the said supply of water was furnished, viz., on, to wit, the 23rd day of January, A. D. 1895.

Wherefore the defendant alleges that the rates and charges to be made for the supply of water furnished by the said plaintiff to the said defendant, in the manner and form as set forth by said plaintiff in said amended declaration, are the sum of nineteen hundred and thirty dollars ($1,930.00) and no more, and this sum the said defendant is ready and willing to pay.

And this defendant is ready to verify; wherefore it prays judgement whether said plaintiff ought to have or maintain its aforesaid action thereof against the defendant, except as to the said *said* sum of $1,930.00, parcel, *ect.*

And for a further plea in this behalf, by leave of the court here first had and obtained, the defendant comes and defends the wrong and injury when, *ect.*, at, *ect.*, and as to all of the said several supposed promises and undertakings in said amended declaration mentioned, except as to the said sum of nineteen hundred and thirty dollars (1,930), parcel of the said several sums of money in said declaration mentioned, says that it, the said plaintiff, ought not to have or maintain its aforesaid action thereof against the said defendant, except as to the said sum of nineteen hundred and thirty dollars ($1,930.00), parcel, *ect.*, as aforesaid, because the defendant says:

That the said plaintiff at all the times mentioned in its said amended declaration was, and now still is, engaged in the public business of supplying the said city and its inhabitants with water for public and private uses through the means of a distributing plant and pipes and mains laid in the streets of said city under and by virtue of the authority given in the ordinances in said amended declaration mentioned.

That the said several sums of hydrant rental mentioned in said amended declaration for the first one hundred and twenty-one (121) hydrants of the hydrants in said declaration mentioned and
55 the rates and charges fixed in and by the said ordinances for the supply of water to be furnished to the said defendant by, in, and through the same, viz., the supply of water mentioned in said amended declaration as having been supplied in, by, and through the same, which said rates and charges as so fixed were the sum of seventy-five dollars per annum per hydrant for the first one hundred of said hydrants, and the sum of sixty-two and fifty-hundredths dollars per hydrant per annum for the next twenty-one of said hydrants, were at the time of the passage of said ordinances and now still are in excess of the reasonable compensation to be made for the supply of water furnished by the said plaintiff to the said defendant during the three months mentioned in said amended declaration, and for the matters and things for which the plaintiff has in the said amended declaration declared, and that the said rates and charges for said supply of water, viz., the supply of water furnished in the manner and form as alleged in the declaration aforesaid, were, and now are, unjust, unreasonable, and excessive.

And that the said ordinance- mentioned in said amended declaration, in so far as they attempted to fix the prices to be paid for the supply of water to be furnished during a long term of years, being voidable at the option of the city council of said city, and the said rates and charges aforesaid therein fixed being unjust, excessive, and unreasonable, the said city council of said city of Danville, after the passage and approval of each and all of the ordinances mentioned in said amended declaration, in view of all the foregoing facts, as it might lawfully do, on, to wit, the 17th day of January, A. D. 1895, passed an ordinance prescribing the maximum rates and charges for the supply of water furnished by the plaintiff to the said defendant for public uses beginning with the first day of May, A. D. 1895; which said ordinance is in words and figures following, viz:

Ordinance No. 517.

An ordinance prescribing the maximum rates and charges for the supply of water furnished by the Danville Water Company
56 to the city of Danville.

Whereas after a careful comparison with the rates and charges paid by this city for the supply of water to the city for public uses, with the rates and charges paid therefor by other cities similarly situated, it is found that the rates charged by the Danville Water Company (a corporation organized under the laws of the State of

Illinois), and paid by this city to said company for the supply of water furnished by said company to this city for public uses, are unjust, excessive and unreasonable.

And whereas, under and by virtue of an act of the General Assembly of the State of Illinois, approved June 6th, A. D. 1891, and in force July 1st, A. D. 1891, entitled: "An act to enable cities, towns and villages incorporated under the general or special law of this State to fix the rates and charges for the supply of water furnished by any individual, company or corporation to any such city, town, village or the inhabitants thereof," as well as under and by virtue of other full, competent and complete legal authority, the city council of the city of Danville, Illinois, (a municipal corporation organized under and by virtue of the general laws of the State of Illinois,) is empower to prescribe by this ordinance the maximum rates and charges for the said supply of water furnished by the said corporation to this city.

And whereas after a full investigation of the matter, it is believed by the members of this council that the rates and charges hereinafter prescribed are just and reasonable.

Therefore be it ordained by the city council of the city of Danville, Illinois:

SECTION 1. That beginning with the first day of May, A. D. 1895, the rates and charges for the supply of water furnished by the Danville Water Company, a corporation as aforesaid, to the said city of Danville, for public uses, shall be as follows, viz:

For the first one hundred and forty (140) fire-hydrants, now being rented by said city from said company, and for the supply of water furnished by said water company, for public uses, by, in and through said hydrants, and for which said city is now paying
57 the said water company, the following rentals, viz: seventy-five dollars ($75.00) per year, per hydrant, for the first one hundred (100) hydrants; sixty-two and one-half dollars ($62.50) per year, per hydrant for the next twenty-one of said hydrants, fifty dollar- ($50.00) per year, per hydrant for the next nineteen (19) of said hydrants, said Danville Water Company shall have and receive from said city of Danville, and said city shall pay said water company the uniform rate of fifty dollar- ($50.00) per hydrant, per annum, and no more.

And for the next twelve (12) fire-hydrants above the one hundred and forty (140) above mentioned, and which are now rented by said city from said water company, and for the supply of water furnished by the said water company for public uses, by, in and through said twelve (12) hydrants, and for all other fire-hydrants now rented or which may be hereafter rented from said company and for the supply of water for public uses, furnished or to be furnished by, and through said hydrants, said Danville Water Company shall have and receive from the said city of Danville, and said city of Danville shall pay said water company, the same rate as is now charged and paid for the same, viz: the rate and charge of forty dollars ($40.00) per hydrant, per annum, and no more.

And for the use of water for flushing the public sanitary sewers

of said city, such as are now built and connected with the pipes and water mains of said water company, and such as may be hereafter built and so connected, which said water has hitherto been furnished by said water company free of charge, said Danville Water Company shall have and receive, from said city of Danville and said city of Danville shall pay said water company, at the rate of five cents (5c.) per one thousand gallons, and no more.

And for the use of water by, in and through the public drinking fountain now used by said city, and for which said water company is now furnishing water free of charge, said Danville Water Company shall have and receive, and said city shall pay said water company at the rate of five dollars ($5.00) per fountain, per annum, and no more.

58 And for water for any other use for which water is now taken by said city or for which water may be hereafter taken by said city from said water company, for public uses, other than as above specified, said Danville Water Company shall charge said city therefor at the same rates as are at that time charged by said water company to private consumers for like service, which rate said city shall pay to said water company, therefor, and no more.

SECTION 2. That said city of Danville shall continue to take from said Danville Water Company all of the supply of water now taken from it, but shall pay therefor only the rates and charges herein prescribed, all former ordinances and provisions to the contrary notwithstanding, and it is hereby made the duty of the city clerk to notify the said water company of that fact by delivering to the superintendent of the water works of said company, in this city, a certified copy of this ordinance within five days (5) after the same is signed by the mayor, or shall go into effect without his signature.

SECTION # 3. In case said water company shall desire to make application to the circuit court of Vermilion county, Illinois, for the purpose of having the question of the reasonableness of the rates and charges fixed herein, promptly determined, or for the purpose of having such rates and charges reviewed and determined by said circuit court, the corporation counsel is hereby authorized to enter the appearance of this city to such suit or cause as may be brought therefor, at the February term, A. D. 1895, of said court.

Passed January 17th, A. D. 1895.

Approved January 19th, 1895.

JAMES SLOAN,
Mayor of the City of Danville.

Attest: R. E. LLOYD, *City Clerk.*

59 Which said ordinance was duly deposited in the office of the city clerk of said city and was afterwards, within the time required by law, viz., on, to wit, the 19th day of January, A. D. 1895, duly approved by the mayor of said city and by the city clerk duly recorded in all respects as required by law.

And afterwards, within five days after the approval of said ordinance, as aforesaid, the said city clerk, on, to wit, the 23rd day of January, A. D. 1895, delivered to the super-tendent of the said

Danville Water Company, in said city of Danville, a duly certified copy of said ordinance.

And the defendant further avers that the said plaintiff had due notice of the passage and approval of said ordinance and of the fact that the said city of Danville would pay no other or greater sum or sums for hydrant rental or for the supply of water to be furnished by said plaintiff to said city for public use, beginning with the first day of May, A. D. 1895, than the sums fixed in and by the said last-mentioned ordinance, viz.: the sum of fifty dollars for the first one hundred and forty (140) of said hydrants per hydrant per annum, for the remaining eighteen (18) of said hydrants.

And that the said supply of water furnished by the plaintiff in manner and form as alleged by plaintiff in its amended declaration was furnished by the said plaintiff with full knowledge of the passage and approval of said ordinance and after due notice of the contents thereof; which said notice was given by the defendant to the plaintiff on, to wit, the 23rd day of January, A. D. 1895.

And that the rates fixed in and by the said last-mentioned ordinance are just and reasonable and are a reasonable compensation for the supply of water furnished by the plaintiff to defendant in manner and form as alleged by the plaintiff in said amended declaration.

Wherefore the defendant alleges that the said plaintiff is entitled to have and receive from the defendant from the said supply of water so furnished, as aforesaid, no other or greater sum than the said sum of nineteen hundred and thirty dollars ($1,930.00), being the amount of rental for such fire-hydrants and the
60 water supplied through the same as fixed by said last-mentioned ordinance; and this the defendant is ready to verify. Wherefore it prays judgement whether the said plaintiff ought to have or maintain its aforesaid action thereof against this defendant except as to the said sum of nineteen hundred and thirty dollars, parcel, *etc.*

And for a further plea in this behalf, by leave of the court here first had and obtained, as to the sum of nineteen hundred and thirty dollars above mentioned, parcel of the said several sums of money in the said amended declaration mentioned, the said defendant says that on, to wit, the first day of August, A. D. 1895, on the day the same fell due and before the commencement of this suit, at, to wit, the county aforesaid, the defendant tendered the plaintiff, in full settlement of the matters set forth in the said amended declaration, a city order or warrant for the said sum of nineteen hundred and thirty dollars, drawn upon the treasurer of the said city, and that said city then and there had funds in the hands of said officers lawfully appropriated for that purpose and sufficient to pay the same in full, to receive which of the said defendant the plaintiff then and there and thence hitherto hath wholly refused; and the said defendant further says that it is ready and willing to deliver the said order to said plaintiff in payment of the said claim of the plaintiff sued upon in this case, and it brings the said order into court here to be delivered to the plaintiff, if said plaintiff will accept the same; and this the de-

fendant is ready to verify. Wherefore it prays judgement if the said plaintiff ought to have or maintain its aforesaid action thereof to recover any more or greater damages than the said sum of nineteen hundred and thirty dollars, parcel, *ect.*, in this behalf, *ect.*

W. J. CALHOUN,
Att'y for Def'd't.
G. F. REARICK, *City Att'y.*

Filed Oct. 30th, 1895.
M. J. BARGER, *Clk.*

61 On the 31st day of October, 1895, there was filed in the office of the clerk of said court the plaintiff's demurrer to said plea in the words and figures following, to wit:

STATE OF ILLINOIS, }
Vermilion County, } *ss:*

In the Circuit Court, of the October Term, A. D. 1895.

DANVILLE WATER COMPANY }
vs.
THE CITY OF DANVILLE. }

And now comes said plaintiff, by Remy and Mann & W. R. Lawrence, its attorneys, and says that said several pleas by defendants above pleaded and each of them are insufficient in law. Wherefore plaintiff prays judgement, *ect.*

REMY & MANN,
W. R. LAWRENCE,
Att'ys for Plaintiff.

Filed October 31st, 1895.
M. J. BARGER, *Clerk.*

THURSDAY MORNING, *October* 31*st*, 1895.

DANVILLE WATER COMPANY }
vs. } 11182. Assumpsit.
CITY OF DANVILLE. }

Now comes said parties, by their respective attorneys, and said plaintiff files its demurrer to each of said defendant's pleas herein.

SATURDAY MORNING, *January* 4, 1896.

Court convened, pursuant to adjournment, at 9 o'clock a. m.
Ordered that court do now adjourn until court in due course of law.

January Term, 1896, 30th Day.

MARCH 7TH, 1896.

62 DANVILLE WATER COMPANY vs. CITY OF DANVILLE. } 11182. Assumpsit.

Now comes said parties, by their respective attorneys, and the court, having duly considered said plaintiff's demurrer to each of defendant's pleas, sustains said demurrer. Whereupon said defendant asks for said demurrer to be carried back to declaration herein and elects to stand by its said pleas.

SATURDAY MORNING, *March 14th*, 1896.

DANVILLE WATER COMPANY vs. CITY OF DANVILLE. } 11182. Assumpsit.

Now again comes said parties, by their respective attorneys, and said defendant, having failed to plead further as required by a rule of the court, comes not, but makes default, and the court, having heard evidence and being fully advised in the premises, finds that said plaintiff has sustained damages by reason of the non-performance of certain promises in its declaration mentioned. It is therefore ordered that said plaintiff have judgement against said defendant for said damages, now assessed by the court at the sum of ($2,701.00) twenty-seven hundred and one dollars. It is therefore considered and adjudged by the court that said plaintiff have and recover of and from said defendant, City of Danville, the sum of ($2,701.00) twenty-seven hundred and one dollars, and also its costs in this behalf expended. Thereupon said defendant moves the court in arrest of judgement, which motion is by the court overruled, and said defendant prays an appeal of this cause to the appellate court, which is granted upon the defendant filing its bill of exceptions herein in twenty days from this date.

On the 21st day of March, 1896, there was filed in the office of the clerk of said court the defendant's bill of exceptions in the words and figures following, to wit:

63 STATE OF ILLINOIS, *Vermilion County,* } *ss:*

In the Circuit Court of said County, January Term, A. D. 1896.

DANVILLE WATER COMPANY vs. CITY OF DANVILLE. } Assumpsit.

Bill of Exceptions.

Be it remembered that this cause came on for hearing upon the amended declaration, the three special pleas of the defendant, the said amended declaration, and the demurrer of the plaintiff to each

of said several pleas, before the Hon. F. Bookwalter, judge of the fourth judicial district of the State of Illinois, on the 7th day of March, A. D. 1895, it being one of the regular days of said term of said court, Remy & Mann and W. R. Lawrence appearing on behalf of the plaintiff, and W. J. Calhoun and G. F. Rearick, city attorney, appearing on behalf of the defendant.

And thereupon the defendant moved the court to carry the demurrer of the plaintiff to the defendant's special plea back to the plaintiff's amended declaration, and asked that such demurrer be sustained as to such amended declaration, and that judgement be entered up for the defendant, and that plaintiff be barred from further having or maintaining its aforesaid action.

And thereupon, having heard the arguments of counsel, the court overruled the motion aforesaid of the defendant and refused to carry back said demurrer as prayed, but sustained the same to the special pleas aforesaid, and the defendant then and there duly excepted to the overruling of said motion, and also then and there duly excepted to the judgment of the court in sustaining such demurrer to said special pleas.

And thereupon, the defendant having elected to stand by its motion aforesaid and its special pleas aforesaid, the court entered up a default against the defendant.

And thereupon came the defendant and moved the court in arrest of judgement and filed the points in writing, particularly specifying the grounds of such motion, viz:

1. The declaration is insufficient and defective for the rea-
64 son that it does not allege that before or at the time of incurring the alleged indebtedness in the ordinance in said declaration mentioned any provision was made for the collection of a direct annual tax sufficient to pay such indebtedness as it fell due, or that any such provision ever was made for the collection of any tax to pay said alleged indebtedness or any part thereof as it fell due.

2. And for the reason that it does not allege that any appropriation has been previously made concerning the expense incurred by the ordinance aforesaid, nor that any such appropriation was made before entering into the alleged contract.

And thereupon the court overruled the said motion in arrest of judgment; to which action of the court the defendant then and there duly excepted, and the court thereupon entered up judgment in favor of the plaintiff and against the defendant for sum of $2,701.00 and costs of suit; to which action of the court the defendant then and there duly excepted.

And forasmuch as the foregoing are matters and things which do not fully appear of record, the defendant presents this as its bill of exceptions, and prays that the same may be signed and sealed by the honorable judge of said court and made a part of the record in this case pursuant to the statute in such cases made and provided, which is done accordingly this — day of March, A. D. 1896.

F. BOOKWALTER, *Judge.* [SEAL.]

Filed March 21st, 1896.

W. J. BARGER, *Clerk.*

On the 11th day of April, 1896, the following proceedings were had in said court and entered of record therein, namely:

SATURDAY MORNING, *April 11th*, 1896.

Court convened, pursuant to adjournment, at 9 o'clock a. m.
It ordered that court now adjourn until court in due course of law.

65 On the 5th day of September, 1899, there was filed in the office of the clerk of said *clerk* the remanding order of the supreme court in the words and figures following, to wit:

STATE OF ILLINOIS, *ss*:

Supreme Court.

At a supreme court begun and held at Springfield on the first Tuesday in the month of June, in the year of our Lord one thousand eight hundred and ninety-six, the same being the 2nd day of June, in the year of our Lord one thousand eight hundred and ninety-six.

Present: Benjamin D. Magruder, chief justice; Alfred M. Craig, justice; Joseph N. Carter, justice; Jacob W. Wilkin, justice; David J. Baker, justice; James H. Cartwright, justice; Jesse F. Phillips, justice.

And afterwards, to wit, on the 17th day of February, in the year of our Lord one thousand eight hundred and ninety-nine, an order was made by said court in the words and figures following, to wit:

CITY OF DANVILLE
vs.
THE DANVILLE WATER COMPANY. } Appeal from Vermilion.

On this day came again the same parties, and the court, having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, are of opinion that in the record and proceedings aforesaid and in the rendition of the judgement aforesaid there is manifest error. Therefore it is considered by the court that for that error and others in the record and proceedings aforesaid the judgement of the circuit court in this behalf rendered be reversed, annuled, set aside, and wholly for nothing esteemed, and that this cause be remanded to the circuit court for further proceedings in accordance with the
66 views expressed in the opinion filed in this cause, and the motion heretofore entered to affirm said judgment is denied.

And it is further considered by the court that the said appellant recover of and from the said appellee — by it in this behalf expended, and that it have execution therefor.

I, A. D. Cadwallader, clerk of the said supreme court, do hereby certify that the foregoing is a true copy of the final order of the said supreme court in the above-entitled cause, of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Springfield, this 29th day of August, in the year of our Lord one thousand eight hundred and ninety-nine.

A. D. CADAWALLADER,
Clerk of Supreme Court. [L. S.]

10c. rev. stamp.

Filed September 5th, 1899.
M. J. BARGER, *Clerk.*

On the 11th day of September, 1899, there was filed in the office of the clerk of said court a notice, with return of sheriff thereon endorsed, in the words and figures following, to wit:

In the Circuit Court of Vermilion County, State of Illinois, of the October Term, 1899.

DANVILLE WATER COMPANY
vs.
CITY OF DANVILLE. } Notice of Reinstatement of Cause, *ect.*

Notice is hereby given that said Danville Water Company has filed in the office of the clerk of said court the remanding order of the supreme court in the said city's appeal, and the said cause will — reinstated on the docket for trial at said term of court.

W. R. LAWRENCE, WITH
REMY & MANN,
Attorneys for Water Company.

67 STATE OF ILLINOIS, }
Vermilion County, } *ss:*

I have duly served the within notice upon the within-named City of Danville by reading the same to Martin B. Bailey, its mayor, and at the same time delivering to him a true copy thereof on the 9th day of September, A. D. 1899.

JAMES SLOAN, *Sheriff,*
By JAMES SLOAN, JR., *Deputy.*

Filed September 11, 1899.
M. J. BARGER, *Clerk.*

Sheriff's Fees.

Serving	.65
Copy	.10
2 miles	.10
Return	.10

On the 2nd day of October, 1899, there was filed in the office of the clerk of said court the additional pleas of defendant in the words and figures following, to wit:

STATE OF ILLINOIS, }
Vermilion County, } ss:

In the Circuit Court of said County, to the October Term, A. D. 1899.

DANVILLE WATER COMPANY }
vs. } Assumpsit.
CITY OF DANVILLE. }

Additional Pleas by the Defendant.

And now comes again the defendant, The City of Danville, by J. H. Lewman, its city attorney, and also by G. F. Rearick, its attorney, and, by leave of court first had and obtained, files the following additional pleas herein, viz:

Plea No. 4.

And for a further plea in this behalf the defendant says that the plaintiff ought not to have or maintain its aforesaid action when, *ect.*, at, *ect.*, against this defendant, because it says, neither at the time of the passages of the ordinances mentioned in the said
68 declaration or at the time of the passage of either of *either of* them, nor at any other time before or at the time of the creation of the indebtedness alleged to exist, was any provision made for the collection of a direct annual tax sufficient to meet the same or any part thereof as it fell due, in manner and form as required by section 12 (12) of article nine (9) of the constitution of this State; and this it is ready to verify; wherefore the defendant prays judgment whether the *the* plaintiff ought to have or maintain its aforesaid action thereof against the defendant, *ect.*

Plea No. 5.

And for a further plea in this behalf the defendants says that the plaintiff ought not to have or maintain its aforesaid action when, *ect.*, at, *ect.*, against this defendant, because it says that the terms and provisions of section four (4) of article seven (7) of an act entitled "An act to provide for the incorporation of cities and villages, approved April 10, 1872, in force July 1, 1872," and all acts amendatory thereof, have not been complied with before the time of the making of the alleged contract declared on, and that no appropriation was then and there previously made concerning the expense for the said water so furnished, and that no appropriation was then and there made prior to the furnishing of said water, nor prior to the making of said alleged contract set up in the declaration; and this the defendant is ready to verify; wherefore it prays judgment whether the plaintiff ought — have or maintain its aforesaid action thereof against this defendant, *ect.*

J. H. LEWMAN, *City Att'y.*
G. F. REARICK,
Att'y for Def'd't.

Filed Oct. 2nd, 1899.
M. J. BARGER, *Clerk.*

On the 2nd day of October, 1899, the plaintiff filed in the office of the clerk of said court its demurrer to said additional pleas in the word- and figures following:

69 STATE OF ILLINOIS, }
Vermilion County. }

Of the October Term, 1899, Vermilion Circuit Court.

DANVILLE WATER COMPANY }
vs. }
CITY OF DANVILLE. }

And the said plaintiff, by W. R. Lawrence and J. B. Mann, its attorneys, comes and says that the additional pleas this day filed by defendant, numbered four and five, are, and each of them, insufficient in law.

Wherefore defendant prays judgment, etc.

W. R. LAWRENCE,
J. B. MANN,
Att'ys for Def't.

Filed October 2nd, 1899.
M. J. BARGER, *Clerk.*

On the 2nd day of October, 1899, the following proceedings were had and entered of record in said court, as follows:

October Term, 1899, October 2nd, 1899.

DANVILLE WATER COMPANY }
vs. } Assumpsit. 11182.
THE CITY OF DANVILLE. }

Now comes the said parties, by their respective attorneys, and this cause is reinstated by the court. Leave is asked by and granted to said defendant to file additional pleas herein. Said plaintiff demurs to additional pleas; which demurrer is by the court sustained; whereupon said defendant excepts. By order of the supreme court the demurrer to the original pleas is overruled as to the first and second pleas; whereupon said plaintiff excepts; and said demurrer is sustained as to the third original plea; and said plaintiff
70 elects to stand by the demurrer to the first and second original pleas; whereupon the court rendered judgment. It is ordered and adjudged by the court that the said plaintiff have and recover of and from said defendant the sum of one thousand nine hundred and thirty dollars ($1,930.00) and costs of suit herein expended, and said defendant excepts to the rendering of said judgment. Now, said plaintiff prays an appeal of the cause to the supreme court; which appeal is by the court granted upon the said plaintiff giving an appeal bond, conditioned according to law, with good security, to be approved by the clerk of this court, in the sum of two hundred dollars ($200), said bond to be filed within thirty (30) days from this date.

On the 14th day of October, 1899, filed in the office of the clerk of said court was the appeal bond of said plaintiff, with the endorsement of the approval of said clerk thereon, in the word- and figures following, to wit:

Appeal Bond from Circuit to Supreme Court.

Know all men by these presents that we, The Danville Water Company (a body politic and corporate), as principal, and G. B. Sidelinger, as surety, of the county of Vermilion and State of Illinois, are held and firmly bound unto the City of Danville, Illinois, in the penal sum of two hundred, 200, dollars; for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated, at Danville, this 12th day of October, in the year of our Lord one thousand eight hundred and ninety-nine.

The conditions of the above obligation is such that whereas the said The Danville Water Company did, on the second day of October, one thousand eight hundred and ninety-nine, at a term of court then being holden within and for the fifth judicial circuit, in the county of Vermilion and State of Illinois, obtain a judgment against the above-bounden The City of *of* Danville for the sum of
71 nineteen hundred and thirty dollars and — cents and costs of suit in an action therein pending, wherein it claimed and demanded twenty-six hundred and twenty and sixty-two-hundredths—, from which judgment the said Danville Water Company has prayed for and obtained an appeal to the supreme court of said State:

Now, if the said The Danville Water Company shall duly prosecute said appeal and shall, moreover, pay the amount of the said costs, interest, and damages to be rendered against it, the said Danville Water Company, in case said judgment shall be affirmed in the said supreme court, then the above obligation to be null and void; otherwise to remain in full force and virtue.

DANVILLE WATER COMPANY, [SEAL.]
By GEO. J. LONG, *Pres't.*
G. B. SIDELINGER. [SEAL.]

Attest: W. J. McGONIGAL, *Sec'y.*

October Term, 1899.

DECEMBER 30TH—Saturday Morning.

Court convened, pursuant to adjournment, at 9 o'clock a. m.; all officers of said court present, as hereinbefore set forth; whereupon certain proceedings were had and entered of record in said court in words and figures following, to wit:

It is ordered that court do adjourn until court in due course of law.

I, M. J. Barger, clerk of the circuit court of Vermilion county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the record and copy of the appeal bond in a certain cause lately pending in said court, on the law side thereof, wherein The Danville Water Company is plaintiff and The City of Danville is defendant, being No. 11182.

In witness whereof I have hereunto set my hand
72 [SEAL.] and affixed the seal of said court, at Danville, this 10th day of January, A. D. 1900.

M. J. BARGER, *Clerk.*

DANVILLE WATER COMPANY, Appellant,
vs.
CITY OF DANVILLE, Appellee.
} Appellant's Assignment of Errors.

And now comes said appellant, by Remy and Mann and W. R. Lawrence, its attorneys, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

1. The circuit court erred in overruling the demurrer of appellant to the first plea to the amended declaration, because the act of the General Assembly of the State of Illinois—that is to say, the act approved June 6, 1891—in said pleas mentioned and therein relied upon as the defense is repugnant to section ten of article one of the Constitution of the United States of America, which prohibits any State to pass a law impairing the obligation of a contract.

2. The circuit court erred in overruling appellant's demurrer to *to* the first original plea to the amended declaration, because the ordinance of defendant passed the 19th day of January, 1895, under and by virtue of the supposed authority in said act of the General Assembly of the State of Illinois, approved June 6th, 1891, which is set forth in said plea, seeks to avoid and abrogate the contract between plaintiff and defendant created by the various ordinances in said declaration mentioned, and the acceptance thereof by the appellant, and by reason thereof is repugnant to section 10, arti-
73 cle one, of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contract-.

III. The circuit court erred in overruling appellant's demurrer to defendant's first original plea to the amended declaration, for the reason that the ordinance of appellee set forth in said plea and passed January 19, 1–95, under the supposed authority of said act of the General Assembly of the State of Illinois approved June 6, 1891, in said first plea set forth, is in violation of section 1 of the 14th amendment to the Constitution of the United States, which provides that no State shall deprive any person of life, liberty, or property without due process of law, nor to deny to any person within its jurisdiction the equal protection of the laws.

IV. The circuit court erred in overruling the demurrer of appellant to the first original plea to the amended declaration, because the act of the General Assembly of the State of Illinois, to wit, the act approved June 6th, A. D. 1891, in said plea mentioned, is in vio-

lation of the laws and constitution, and, among others, is in violation of the fourteenth amendment to the Constitution of the United States, in that it attempts to deprive, and to authorize the city of Danville to deprive, appellant of it prosperty without due process of law.

V. The circuit court erred in overruling the demurrer of appellant to the second original plea to the amended declaration, because the act of the General Assembly of the State of Illinois—that is to say, the act approved June 6th, 1891—in said plea mentioned and therein relied upon as the defense is repugnant to section ten of article one of the Constitution of the United States of America, which prohibits any State to pass a law impairing the obligation of a contract.

VI. The circuit court erred in overruling the demurrer of appellant to the second original plea to the amended declaration, because the ordinance of the defendant passed on the 19th day of January, 1895, under and by virtue of the supposed authority in said act of the General Assembly of the State of Illinois approved June
74 6th, 1891, which is set forth in said plea, seeks to avoid and abrogate the contract between plaintiff and defendant created by the various ordinances in said declaration mentioned, and the acceptance thereof by appellant, and by reason thereof is repugnant to section 10, article one, of the Constitution of the United States, which provides that *that* no State shall pass any law impairing the obligation of contract-.

VII. The circuit court erred in overruling the appellant'- demurrer to defendant's second original plea to the amended declaration for the reason that the ordinance of the appellee set forth in said plea and passed January 19th, 1895, under the supposed authority of said act of the General Assemby of the State of Illinois approved June 6th, 1891, in said plea set forth, is in violation of section one of the 14th amendment of the Constitution of the United States, which provides that no State shall deprive any person of life, liberty, or property without due process of law, nor to deny to any person within its jurisdiction the equal protection of the law-.

VIII. The circuit — erred in overruling the demurrer of the appellant to the second original plea to the amended declaration, because the act of the General Assembly of the State of Illinois, to wit, the act approved June 6th, A. D. 1891, in said plea mentioned is in violation of the laws and constitution, and, among others, is in violation of the fourteenth amendment to the Constitution of the United States, in that it attempts to deprive, and to authorize the city of Danville to deprive, the appellant of its property without due process of law.

REMY & MANN,
W. R. LAWRENCE,
Attorneys for Appellant.

75 In the Supreme Court of the State of Illinois, Central Grand Division, February Term, A. D. 1900.

DANVILLE WATER CO., Appellant, *vs.* CITY OF DANVILLE, Appellee. } Appeal from the Circuit Court of Vermilion County.

Cross-errors Assigned by Appellee.

And now comes The City of Danville, appellee, by John H. Lewman, city attorney, and Geo. F. Rearick, its attorneys, and shows the court here that there is manifest error in the record herein in this, to *say*.

1. It was error to sustain a demurrer to the fourth plea filed by the defendant.
2. It was error to sustain a demurrer to the fifth plea filed by the defendant.
3. It was error to render judgment against the said defendant for the sum of nineteen hundred and thirty dollars or any other sum.
4. It was error not to enter judgment for the defendant.
5. The judgment of the circuit court should have been against the plaintiff for costs of suit.

Wherefore, for the reasons above set forth and which the record will sustain, the judgment of said circuit court ought to be reversed.

JOHN H. LEWMAN,
City Attorney.
GEO. F. REARICK,
Att'y for Appellee.

76 And be it further remembered that afterwards, to wit, on the said 6th day of February, A. D. 1900, there was filed in the office of the clerk of said supreme court a certain other transcript of a record in which the same party is plaintiff and the same party defendant; which said record is in the words and figures following, to wit:

77 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } *ss.*:
Vermilion County, }

In Circuit Court, January Term, A. D. 1896.

Pleas before the Honorable Ferdinand Bookwalter, one of the three judges of the fourth judicial circuit of the State of Illinois and presiding judge of the circuit court of Vermilion county, in the State aforesaid, at a term thereof begun and held at the court-house, in the city of Danville, in said county, on the twentieth (20th) day (being the third Monday) of January, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the said United States the one hundred and twentieth.

Present: Honorable Ferdinand Bookwalter, one of the three judges of the fourth judicial circuit of the State of Illinois; Seymore

G. Wilson, State's attorney; Martin J. Barger, clerk; William C. Thompson, sheriff.

Attest: MARTIN J. BARGER, *Clerk.*

First Day, January Term, 1896.

MONDAY, *January 20th*, 1896.

Court convened at 9 o'clock a. m. by due proclamation according to law.

On the 23rd day of November, 1895, there was filed in the office of the clerk of said court a præcipe for summons in the words and figures following, to wit:

DANVILLE WATER COMPANY
vs.
CITY OF DANVILLE.

Præ. for Sum.

Assumpsit.

Damages, $5,000.00.

78 STATE OF ILLINOIS, }
Vermilion County, } *ss.:*

In the Vermilion County Circuit Court, January Term, A. D. 1896.

In the Matter of DANVILLE WATER COMPANY, Plaintiff,
vs.
CITY OF DANVILLE, Defendant.

To the clerk of said court:

You will please issue a summons in the above-entitled cause directed to the sheriff of said county in plea of assumpsit, returnable at the January term of said court, A. D. 1896, to the damage of the plaintiff of five thousand dollars.

Dated the 22nd day of November, 1895.

REMY & MANN, *Att'ys.*
W. R. LAWRENCE.

Issued, as requested, November 23, 1895.

M. J. BARGER, *Clerk.*

Filed November 23rd, 1895.

M. J. BARGER, *Clerk.*

On the 23rd day of November, 1895, there was issued out of the office of the clerk of said court a summons in the words and figures following, to wit:

STATE OF ILLINOIS, }
Vermilion County. }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon the City of Danville, if it shall be found in your county, personally to be and appear before the circuit court of said Vermilion county on the first day of the next term thereof, on the 20th day of January next, to answer unto the Danville Water Company in a plea of assumpsit to the damage of the said plaintiff, as it says, in the sum of five thousand dollars ($5,000.00) *dollars*, and have you then and there this writ, with
79 an endorsement thereon in what manner you have executed the same.

Witness M. J. Barger, clerk of our said court, and the seal thereof, at Danville, this 23rd day of November, A. D. 1895.

[SEAL.] M. J. BARGER, *Clerk.*

On the 23rd day of November, 1895, there was returned to and filed in the office of the clerk of said court the said summons, with the return of the sheriff thereon indorsed, in the words and figures following, to wit:

Vermilion County Circuit Court, January Term, 1896.

DANVILLE WATER COMPANY }
vs. } No. 11354.
CITY OF DANVILLE. }

Circuit Court Summons.

Filed November 23rd, 1895. M. J. Barger, Clerk.

I served this writ on the within-named defendant, W. L. Runyan, mayor of the city of Danville, by reading the same to him and at the same time delivering him a true copy thereof this 23rd day of November, 1893.

W. C. THOMPSON, *Sheriff*,
By JAMES SLOAN, *Deputy Sheriff*.
REMY & MANN &
W. R. LAWRENCE, *Attorneys*.

Fees.

Service	.65
Copy	.10
2 miles, travel	.10
Return	.10
	$.95

On the 10th day of January, 1896, there was filed in the office of the clerk of said court by plaintiff its declaration in the words and figures following, to wit:

80 In the Circuit Court of Vermilion County, January Term, A. D. 1896.

STATE OF ILLINOIS, } ss:
Vermilion County, }

Danville Water Company (a corporation), plaintiff in this suit, by Remy & Mann & W. R. Lawrence, attorneys, complain of City of Danville, Illinois, defendant in this suit, summoned, etc., of a plea of trespass on the case on promises:

For that whereas the said defendant heretofore, to wit, on the 30th day of October, in the year of our Lord one thousand eight hundred and eighty-five, at Danville, to wit, at the county aforesaid, became and was indebted to the said plaintiff in the sum of 2,620.62 dollars of lawful money of the United States of America for divers goods, wares, and merchandise the plaintiff before that time sold and delivered to the said defendant and at the special instance and request of the said defendant, and, being so indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned when the said defendant should be thereunto afterwards requested;

And whereas also the said defendant afterwards, to wit, on the same day and year and at the place aforesaid, in consideration that the plaintiff had before that time, at the like special instance and request of the said defendant, sold and delivered to the said defendant divers other goods, wares, and merchandise of the said plaintiff, the said defendant then and there undertook and faithfully promised the said plaintiff that the said defendant would well and truly pay to the said plaintiff so much money as the last aforesaid goods,

81 wares, and merchandise at the time of the sale and delivery thereof were reasonably worth when the said defendant should be thereunto afterwards requested, and the said plaintiff avers that the said goods, wares, and merchandise last mentioned at the time of the sale and delivery thereof were reasonably worth the sum of 2,620.62 dollars of like lawful money, as aforesaid, to wit, at the place aforesaid, whereof the said defendant afterwards, on the same day and year and at the place aforesaid, had notice;

And whereas also the said defendant afterwards, to wit, on the same day and year and at the place aforesaid, was indebted to the said plaintiff in the further sum of 2,620.20 dollars of like lawful money, as aforesaid, for money before that time lent and advanced by the said plaintiff to the said defendant and at the like request of the said defendant, and in the like sum for other money by the said plaintiff before that time paid out and expended for the said defendant and at the like request of the said defendant, and in the like sum for other money by the said defendant before that time had and received to and for the use of the said plaintiff, and in the like sum for other money before that time and then due and owing the said plaintiff for interest upon and for the forbearance of divers other sums of money before that time and then due and owing from said

defendant to said plaintiff, and in the like sum for the price and value of work then done and material for the same provided by the said plaintiff for the said defendant and at the like request of the said defendant, and, being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, *it* undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the several sums of money in this count mentioned when the said defendant should be thereunto afterwards requested;

82 And whereas also the said defendant afterwards, to wit, on the same day and year and at the place aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff and then and there being in arrears and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further sum of 2,620.62 dollars of like lawful money, as aforesaid, and, being so found in arrear and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, *it* undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned when the said defendant should be thereunto afterwards requested;

And also whereas the defendant afterwards, to wit, on the 30th day of October, 1895, at the county and State aforesaid, became and was indebted to the plaintiff in the further sum of $2,620.20 for the rental and use of 158 fire-hyrants theretofore had and enjoyed and used by defendant, and which were then and there furnished by plaintiff, for which defendant then and there undertook and agreed to — plaintiff the sum of $2,620.62;

Nevertheless, the said defendant (although often requested, etc.) has not yet paid the said several sums of money above mentioned or any or either of them or any part thereof to the said plaintiff, but to pay the same or any part thereof to the said plaintiff the said defendant has hitherto altogether refused and does still refuse, to the damage of the said plaintiff five thousand dollars, and therefore the plaintiff brings suit, etc.

REMY & MANN &
W. R. LAWRENCE,
Plaintiff's Attorneys.

83 City of Danville, Illinois, to Danville Water Company, Dr.

To the rental and use of 158 fire-hydrants from August 1st to October 30th, 1895, inclusive	$2,620.62

City of Danville to Danville Water Company, Dr.

To goods, wares, and merchandise sold and delivered	$5,000
To money lent and advanced	5,000
To money paid, laid out, and expended	5,000
To money had and received to and for the use of said plaintiff	5,000

To money due for interest and forbearance..... 5,000
To labor, services, and material..... 5,000
To balance due on account stated..... 5,000

Filed this 10th day of January, 1896.
M. J. BARGER, *Clerk.*

REMY & MANN &
W. R. LAWRENCE,
Plaintiff's Attorneys.

On the 22nd day of January, 1896, there was filed in the office of the clerk of said court a demurrer to said declaration in the words and figures following, to wit:

DANVILLE WATER COMPANY
vs.
CITY OF DANVILLE.

Demurrer to Declaration.

STATE OF ILLINOIS, } ss:
Vermilion County, }

In Circuit Court of said County, January Term, A. D. 1896.

CITY OF DANVILLE
als.
DANVILLE WATER COMPANY. } Assumpsit.

And now comes the defendant, by G. F. Rearick, its city attorney, and defends and says that the declaration of the plaintiff
84 herein is not sufficient in law, nor is the defendant bound by the law to answer to the matters and facts therein alleged; and this the defendant is ready to verify; wherefore it demurs and prays judgment against the said plaintiff for want of a sufficient declaration in this behalf, and that the said plaintiff may be barred from further having or maintaining its action thereof against the defendant, etc.

G. F. REARICK,
City Attorney.

Filed Jan'y 22d, 1896.
M. J. BARGER, *Clerk.*

On the 21st day of March, 1896, there was filed in the office of the clerk of said court plaintiff's amended declaration in the words and figures following:

(See page 80 of this record for order of court.)

STATE OF ILLINOIS, }
Vermilion County, } ss:

Vermilion County Circuit Court, January Term, A. D. 1896.

DANVILLE WATER COMPANY }
vs. }
CITY OF DANVILLE. }

The said plaintiff, by Remy & Mann and W. R. Lawrence, its attorneys, by this its amended declaration, amended by leave of the court first had and obtained, complains of the said defendant of a plea of trespass on the case on promises:

For that whereas the said plaintiff, on, to wit, the ninth day of November, A. D. 1882, was and ever since that time has been and now is a corporation duly organized under the general incorporation laws of the State of Illinois then in force, and as such corporation having the power to make the several contracts and do and perform the several acts hereinafter mentioned, and the said defendant was and ever since has been and now is a municipal corporation created and formed under the laws of the State of Illinois, known as chapter twenty-four of the Revised Statutes of said State, and the amendments thereto, and on the day and year aforesaid there was duly
85 and lawfully passed by the city council of the said defendant an ordinance which was afterwards approved by the then mayor of said city and duly published according to law on the 11th day of November, A. D. 1882; which said ordinance is in the words and figures following, to wit:

An ordinance providing for a supply of water to the city of Danville and its inhabitants, authorizing the Danville Water Company to construct and maintain water works, contracting with said company for a supply of water for public use, and giving said city an option to purchase said works.

Be it ordained by the city council of the city of Danville in manner following—that is to say:

1. The privilege is hereby granted to the Danville Water Company, a corporation duly organized and existing under the laws of the State of Illinois, and to its successors and assigns, for thirty years from the passage of this ordinance, to construct and maintain within and near the city of Danville, water works for supplying the said city and the inhabitants thereof and of the adjacent municipalities and territory with water for public and private uses, and to use the streets, alleys, sidewalks and public grounds, and the rivers, streams, and bridges of the city of Danville, within its present and future corporate limits, for placing, taking up and repairing mains, hydrants and other structures and devices requisite for the service of water.

2. The source of the water shall be the North fork of the Vermilion river at a point above the present sewage of the city of Danville, north of Fairchild street. The pump-house shall be of stone or brick of ample size to accommodate the machinery of the said water

company, and there shall be two pumping engines of modern and appropriate style and good efficiency, having an aggregate pumping capacity of four million gallons of water in twenty-four hours. There shall be a stand pipe as part of the water-works system, not less than one hundred and fifty feet high. All the mains used in the said construction shall be tested at their place of manufacture, before being laid, under a pressure of three hundred pounds to the square inch, and they shall be of suitable size to furnish an abundant supply of water for present and future requirements. The fire-hydrants rented by said city, as hereinafter stated, shall be of modern and appropriate style and good efficiency, with frost jacket, and with double delivery, fitted to connect with the hose coupling now in use by the fire department of said city. Written notice being given by said company to said city of Danville, there shall be a test of the power and capacity of said water works on their completion, when they shall throw from separate hydrants in the business portion of said city six simultaneous streams through a fifty-feet section of hose and a one-inch nozzle, to a height of one hundred feet, and when they shall throw at another time from separate hydrants in other portions of the said city four simultaneous effective fire streams.

3. The said water company shall commence in good faith the construction of said water works within sixty days from the passage and approval of this ordinance, and shall have in successful operation at least eight miles of water mains in said city in the month of September, in the year 1883, and shall have the said works fully completed, with ten miles of water mains in said city, in the month of December, in the year 1883. The lines of water mains shall be so located and laid as to afford fire protection to the several wards, there being no less than one mile of mains in each ward.

4. All mains shall be so located and laid as not to interfere unnecessarily with any pipes, mains, conduits and sewers existing at the time of such location and laying. There shall be no unreasonable or unnecessary obstruction of the streets, alleys, sidewalks or public grounds of the said city by said water company in constructing the said works or in placing, taking up or repairing any mains, hydrants or other structures or devices requisite for the service of water, and the said water company, after using the said streets, alleys, sidewalks and public grounds, shall restore them, within a reasonable time, as nearly as practicable to their former condition, and shall hold the said city harmless from any and all damages arising from negligence or mismanagement of said water company or its employees in constructing, extending or operating said works. In all street excavations the said water company shall keep red danger lights burning at night along the line of the same, at least one light to every one hundred and fifty feet, and shall erect and maintain sufficient barricades at the ends of said excavations and at all streets and alleys where they cross said excavations. If the said city shall change the surface of any street or alley in which the said water company shall have laid a main, and if such change shall exceed one foot, and if the

said water company shall relay its main on account of such change, then the said city shall reimburse to the said water company the actual costs thereof.

5. If at any time it shall appear that said water company by extending its mains, will derive a steady additional revenue of not less than one hundred dollars per annum for every three hundred feet of such extension, either from responsible private consumers, secured by written agreement, or from the rental of public fire-hydrants upon the terms hereinafter stated, then the city council may by ordinance require the said water company to make such extension without unnecessary delay. But at the
88 expiration of thirty years from the passage and approval of this ordinance, all right of said city of requiring extensions shall cease, unless the rights, privileges and contract hereby granted and made shall have been renewed.

6. The said company shall not charge to consumers during the continuance of the franchises granted by this ordinance exceeding the following maximum annual rates. But it shall have the right, at its will at any time, to insert a meter into the service pipe of any consumer, and to supply him at meter rates:

Banks, with one basin	$10.00
Bakery, each oven	$10.00 to 30.00
Barber shop, first chair	6.00
Barber shop, each additional chair	3.00
Bath, without heating apparatus, private	4.00
Bath, with heating apparatus, private	5.00
Bath, in boarding-house or hotel, first tub	8.00
Bath, in boarding-house or hotel, each additional tub	4.00
Bath, public, not less than	12.00
Brewery, per barrel brewed	.05
Billiard saloon, each table	4.00
Boarding-house, per room (no license less than $10.00)	1.50
Book-bindery, not less than	10.00
Brick-work, per 1,000 laid	.10
Brick yard, each gang of hands	25.00
Butcher shop, steam extra	10.00
Candy manufacturers	15.00 to 30.00
Cigar manufacturers (no license less than $10.00), per hand.	2.00
Confectioners	10 to 30.00
Cow-, each	2.00
Distilleries, for each barrel distilled	.10
Dyeing and scouring	10.00 to 30.00
Forge, first fire	5.00
Forge, each additional fire	2.00
Fountain, six months (running not more than six hours per day) according to size of jet	12.00 to 15.00
89 Halls and theatres	12.00 to 30.00
Horse, one, including washing carriage	4.00
Horse, each additional	3.00
Horse, for private stable, not less than	3.00

Hotel, per room	Special
Ice-cream saloon	10.00 to 20.00
Laundry	24.00 to 100.00
Offices or sleeping rooms	5.00 to 10.00
Oyster saloons	10.00 to 20.00
Printing offices, six hands or less (engine extra)	12.00
Printing office, each additional hand	1.50
Photograph galleries	10.00 to 15.00
Plastering, per square yard	.00½
Residence, occupied by one family, for domestic use, one to three rooms	5.00
Residence, each additional room	1.00
Restaurant	12.00 to 20.00
Saloons	10.00 to 30.00
Sprinkling, private garden ¾ hose, ⅛ nozzle, first fifty yards, per square yard	.04
Sprinkling, all over fifty yards, per square yard	.02
Sprinkling carts, per month	Special
Sprinkling sidewalk to center of street, ¾ hose, ⅛ nozzle, 1-½ hours per day (no license less than $5.00), per foot front	.10
Stable, livery, board, or sale, six horses or less, including carriage-washing	12.00
Stable, each additional stall	1.50
Steam boilers, rated per horse-power, from one to ten-horse power (working ten hours per day)	4.00
Steam boilers, each additional up to twenty	3.00
Steam boilers, over twenty	Special
Stone-work, per perch	.07
Stores and shops	8.00 to 20.00
Tenement, (no license less than $6.00) per room	1.50
90 Tobacco manufacturers, (no license less than $5.00) per hand	1.50
Urinal basins	$6.00 to 12.00
Water-closets, private	5.00
Water-closets, public	10.00
Wash-basins, in dwellings	2.00
Wash-basins, in hotels	3.00

Meter Rates.

100 gallons to 500, per day, per 100 gallons	.05
500 to 1,500 gallons per day, per 100 gallons	.04
1,500 — 3,000 gallons per day, per 100 gallons	.03½
3,000 to 5,000 gallons per day, per 100 gallons	.03
10,000 or more gallons per day, per 100 gallons	.02

The rates in this section prescribed shall be paid quarterly, except sprinkling rates, which shall be paid for the season.

7. At the expiration of five, ten and twenty years after the completion of said works, and at the expiration of said term of thirty years, and at the expiration of any renewed term thereof, said city

shall have the right to purchase said works with its privileges and property at a fair valuation, to be ascertained as follows: In the event said city and said water company shall fail to agree on the price, three disinterested appraisers of good intelligence, not residents of the county of Vermilion, shall be chosen and sworn to determine the value thereof. One to be appointed by the said city, one by the said water company, and the third by the two so appointed. When said three persons shall have been so chosen, and before they determine said value, the said city and the said water company shall each at their option have the right to call non-resident experts, not exceeding three in behalf of each party, to give testimony under oath before said three appraisers as to such value.

91 The said three appraisers shall then proceed to determine such value, and in so doing, they shall take into consideration the productive value of the said water works, rights, privileges and property. And in the event there being no existing fire-hydrant contract with said city at the date of such appraisement, the last existing contract shall be included in the estimated productive value, as though still in existence. When the three or their majority shall have made an award in writing, ten per centum shall be added to the amount thereof; provided, the appraisal be made at the expiration of five years, but no percentum shall be added to the ascertained value of said property after the first period of five years. And the said city shall then have the option of refusing to pay after such award shall have been made, or of paying in cash to said water company within three months from the date of such award, the amount thereof and the additional ten per centum thereon. If the said city shall refuse to purchase as aforesaid, it shall pay the necessary expenses incurred in making said award. The said city shall in such purchase, assume and perform all unfinished contracts made by said water company for furnishing water, and shall assume and pay all debts and obligations of the water company, not exceeding in amount the said purchase-money to be paid by said city. And all sums so paid shall be in part discharge of said purchase-money. But if said city shall determine to avail itself of this right to purchase, it shall, in all cases, give written notice to the said water company of such determination, at least one year before the expiration of said privileges, or before the other dates of purchase.

8. In consideration of the benefits which will be derived by the said city and its inhabitants from the construction and operation of the said water works, and in further consideration of the water supply hereby secured for public uses, and as the inducement to

92 said water company to accept the provisions of this ordinance and contract, and to enter upon the construction of said water works, the right and privileges hereby granted to and vested in said water company shall remain in force and effect for thirty years from the passage of this ordinance; and for the same consideration and as the same inducement, the city of Danville hereby rents of the Danville Water Company for the uses hereinafter stated, one hundred fire-hydrants of the character hereinafter described

for and during the term of thirty years from the passage of this ordinance, and agrees to locate them promptly along the line of the street mains, on demand of said company, and on submission by it to said city of a plan of the location of said street mains, and agrees to use the said hydrants carefully and to pay said water company for any injury which may happen to any of them when used by any officer, servant or member of the fire department of said city, and agrees to pay rent for said one hundred hydrants at the rate of seventy-five dollars each per year, and agrees to pay during the unexpired term of said ordinance and privilege, for any additional fire-hydrants which the city may hereafter locate at the rate of sixty-two and fifty one-hundredths dollars each, per year, for the next forty additional hydrants, and for all fire-hydrants in excess of one hundred and forty at the rate of fifty dollars each, per year; all of which sums shall be paid by said city to said water company, beginning from the dates when each of such hydrants shall be put into successful operation, in quarter-yearly installments on the first days of February, May, August and November of each year, and termination upon the expiration of said term of thirty years, or upon the purchase of said works and their privileges and property by the said city.

9. The first hydrants rented *to* the said city of the said water company shall be used only for the extinguishment of fires, and shall constantly furnish effective fire streams without the aid of
93 portable engines, and flushing gutters and sewers through a hose and fire-nozzle. In flushing, no one hydrant shall be used exceeding ten minutes in one week, nor shall more than one hydrant opening be turned on at the same time, nor shall any flushing be done during the existence of fire without notice to the water company.

10. The said water company shall constantly keep all fire-hydrants rented of it by said city supplied with water for fire service, and shall maintain them in effective working order. The chief of the fire department of said city, or in his absence the officer in charge thereof, shall have charge and control of said fire-hydrants, and may at any time cause such hydrants to be inspected, and if on such inspection any of said hydrants are found to be out of working order, he shall forthwith notify said water company in writing, specifying the hydrant or hydrants out of working order, and shall also report to the city council the date of such examination and the result thereof and his subsequent action in the premises. And in case any such hydrant shall remain out of repair for one week or more after the said water company shall have been so notified in writing, the said city shall be entitled to deduct from said hydrant-rental account, the sum of ten dollars per week so long (as) such hydrant is not in working order: Provided that the total amount so deducted shall not exceed double the yearly rental of such hydrant or hydrants. And in case that the said water company, after said water works have been completed and in successful operation, shall suffer a suspension of the supply of water for both domestic and fire purposes exceeding thirty days, then and in that

case said water company shall forfeit all privileges hereby granted, unless such suspension shall have been caused — circumstances beyond the control of the said water company.

11. The said water company or assigns, in consideration of said city renting such number of fire-hydrants, hereby agree to
94 gratuitously furnish and erect a combined spray and drinking fountain for man and beast, flowing twelve hours *per diem*, (and not exceeding two thousand gallons *per diem*), on the public square in said city; and also to furnish free, water for said fountain, and in addition thereto water for two additional drinking fountains, flowage not to exceed one thousand gallons *per diem*, fountains to run except during freezing weather, also — free for all city offices and quarters of the fire department situated on lines of water mains in said city, (for drinking and washing purposes), for and during the term and continuance of this privilege and ordinance. Whenever the city council shall decide to erect additional public drinking fountains for man and beast, such fountains shall be located on the lines of water mains at such point or points as the city council may designate, the annual rental of such additional fountains shall be one hundred dollars each per annum, payable quarterly as for fire-hydrants. All public drinking fountains shall be provided with automatic valves, or shall furnish a constant-flowing stream through a small orifice, at the option of said water company or assigns to prevent the waste of water.

12. The said water company shall provide and maintain at its own expense, a telephone or other electric line affording connection between its pump-house and each principal fire-department station, for use during fires, the city to furnish its own instruments.

13. The said city shall adopt and enforce ordinances protecting the said water company in the safe and unmolested exercise of these franchises, and against fraud and imposition, and against injury to its property and waste of water by consumers, and the said water company may make and enforce as part of the conditions upon which it will supply water to consumers, all needful rules and regulations not inconsistent with law.

95 14. This ordinance shall become binding as a contract on the said city of Danville in the event that the said Danville Water Company shall, within ten days from the passage and publication of this ordinance, file with the city clerk of said city its written acceptance of the terms, obligations and conditions of this ordinance, and upon such acceptance this ordinance shall constitute the contract, and shall be the measure of the rights and liabilities of the said city and of the said water company.

15. All ordinances and parts of ordinances inconsistent with the provisions of this ordinance, and especially the ordinance entitled: "An ordinance to provide for the construction and maintenance of water works for the supply of water to the city of Danville, Illinois, and its inhabitants, and for the prevention and extinguishment of fires in said city," passed and approved April 22d, 1882, are hereby repealed, and this ordinance shall take effect from and after its passage and publication.

Passed and approved this 9th day of November, A. D. 1882.

L. T. DICKASON, *Mayor.*

Attest: A. C. FREEMAN,

[SEAL.] *City Clerk.*"

And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the first day of May, A. D. 1883, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the mayor of said defendant, and was duly published according to law on the
96 eighth day of June, A. D. 1883; which said ordinance is in the words and figures following, to wit:

An ordinance to amend and carry out an ordinance of the city council of the city of Danville entitled "An ordinance providing for a supply of water to the city of Danville and its inhabitants, authorizing the Danville Water Company to construct and maintain water works, contracting with said company for a supply of water for public use, and giving said city an option to purchase said works," passed and approved November 9th, A. D. 1882.

Whereas, the Danville Water Company has commenced in good faith the construction of its water works within sixty days from the passage and approval of an ordinance of the city council of the city of Danville entitled "An ordinance providing for a supply of water to the city of Danville and its inhabitants; authorizing the Danville Water Company to construct and maintain water works; contracting with said company for a supply of water for public use, and giving said city an option to purchase said works," passed and approved November 9th, A. D. 1882, which commencement in good faith of said construction is hereby acknowledged; and

Whereas, the Danville Water Company has submitted to the city of Danville a plan of the location and sizes of its street mains, and the city of Danville has thereupon, on demand of said water company, located on said street mains the one hundred hydrants rented by the said city of Danville of the said water company; and

Whereas, the Danville Water Company proposes, in addition to connecting its works for a water supply with the North fork of the Vermilion river at a point above the present sewage of the city of Danville, north of Fairchild street, to dig a well or wells north of Fairchild street, in the vicinity of its pumping station, and to utilize for water supply the water pumped by it from such well or wells so dug:

Now, for amendment of said ordinance in conformity with
97 the foregoing, and for the purpose of carrying out the said ordinances:

Be it ordained by the city council of the city of Danville, in manner following—that is to say:

1. That section 2 of an ordinance of the city of Danville en-

titled "An ordinance providing for a supply of water to the city of Danville and its inhabitants; authorizing the Danville Water Company to construct and maintain water works; contracting with said company for a supply of water for public use, and giving said city an option to purchase said works," passed and approved November 9th, 1882, which reads as follows:

"2. The source of water supply shall be the North fork of the Vermilion river, at a point above the present sewage of the city of Danville, north of Fairchild street. The pump-house shall be of stone or brick, of ample size to accommodate the machinery of the said water company, and there shall be two pumping engines of modern and appropriate style and good efficiency, having an aggregate pumping capacity of four million gallons of water in twenty-four hours. There shall be a stand pipe as part of the water-works system, not less than one hundred and fifty feet high. All the mains used in the said construction shall be tested at their place of manufacture before being laid, under a pressure of three hundred pounds to the square inch, and they shall be of suitable requirements. The fire-hydrants rented by said city, as hereinafter stated, shall be of modern and appropriate style and good efficiency, with frost jacket, and with double delivery, fitted to connect with the hose couplings now in use by the fire department of said city. Written notice being given by said company to said city of Danville, there shall be a test of the power and capacity of said water works on their completion; when they shall throw from separate hydrants in the business portion of said city six simul-
98 taneous fire streams through a fifty-feet section of hose and a one-inch nozzle to a height — one hundred feet, and when they shall throw at another time from separate hydrants in other portions of said city four simultaneous effective fire streams."

Be, and the same is, hereby amended to read as follows:

2. The Danville Water Company shall take its water supply from the North fork of the Vermilion river at a point above the present sewerage of the city of Danville, north of Fairchild street, or from a well or wells dug by it north of Fairchild street, in the vicinity of its pumping station, or from North fork and such well or wells, changing from one to the other, or to both sources of supply, from time to time at its discretion. The pump-house shall be of stone or brick, of ample size to accommodate the machinery of the said water company, and there shall be two pumping engines of modern and appropriate style and good efficiency, having an aggregate pumping capacity of four million gallons of water in twenty-four hours. There shall be a stand pipe as part of the water-works system, not less than one hundred and fifty feet high. All the mains used in the said construction shall be tested at their place of manufacture before being laid, under a pressure of three hundred pounds to the square inch; and the locations and sizes of those permitted to be laid may be as follows, the said water company having the right to select the side of the street:

From the pumping station to the intersection of Lincoln and Denmark streets, 14 inches diameter.

In Woodbury street, from Franklin to Vermilion streets, 6 inches diameter.

In Griggs street, from Junction avenue, to Collett street, 6 inches diameter.

In Lincoln street, from Denmark to Harmon avenue, 14 inches diameter.

99 In Williams street, from Harmon avenue to Vermilion street, 10 inches diameter.

In Williams street, from Vermilion to Section streets, 8 inches diameter.

In Williams street, from Section to Junction avenue, 6 inches diameter.

In Ann street, from Harmon avenue to Gilbert street, 4 inches diameter.

In Seminary street, from Grant street to Harmon avenue, 6 inches diameter.

In Madison street, from Mill street to Harmon avenue, 4 inches diameter.

In Madison street, from Harmon avenue to Vermilion street, 10 inches diameter.

In Madison street, from Vermilion to Depot streets, 6 inches diameter.

In Harrison street, from Mill to Pine streets, 4 inches diameter.

In North street, from Robinson to Depot streets, 4 inches diameter.

In Main street, from Pine to Franklin streets, 8 inches diameter.

In Main street, from Franklin to Gray streets, 10 inches diameter.

In Main street, from Gray to Collett streets, 6 inches diameter.

In South street, from Vermillion to Buchanan streets, 6 inches diameter.

In Chestnut street, from College to Elizabeth streets, 4 inches diameter.

In Grant street, from Lincoln to Seminary streets, 6 inches diameter.

100 In Mill street, from Madison to Harrison streets, 6 inches diameter.

In Harmon avenue, from Lincoln to Williams streets, 14 inches diameter.

In Harmon avenue from Williams to Mansson streets, 10 inches diameter.

In Robinson street, from Harrison to North streets, 4 inches diameter.

In Gilbert street, from Williams to Madison streets, 6 inches diameter.

In Pine street, from Madison to Main streets, 8 inches diameter.

In Oak street, from Seminary to Madison streets, 4 inches diameter.

In Franklin street, from Woodbury to Williams streets, 4 inches diameter.

In Franklin street, from Williams to Madison streets, 6 inches diameter.

In Franklin street, from Madison to Main streets, 4 inches diameter.

In Walnut street, from Williams to Main streets, 4 inches diameter.

In Vermilion street, from Woodbury to Williams streets, 4 inches diameter.

In Vermilion street, from Williams to Madison streets, 8 inches diameter.

In Vermilion street, from Madison to Main streets, 10 inches diameter.

In Vermilion street, from Main to South streets, 6 inches diameter.

In Hazel street, from Williams to Madison streets, 4 inches diameter.

In Hazel street, from Madison to Main streets, 6 inches diameter.

101 In Hazel street, from Main to South street, 4 inches diameter.

In Hazel street, from South to Green streets, 6 inches diameter.

In Jackson street, from Williams to Madison streets, 6 inches in diameter.

In Jackson street, from Madison to North streets, 4 inches diameter.

In Depot street, from Madison to Main streets, 6 inches diameter.

In Gray street, from Main to South streets, 4 inches diameter.

In College street, from South to Chestnut streets, 6 inches diameter.

In Elizabeth street, from South to Chestnut streets, 6 inches diameter.

In Elizabeth street, from Chestnut to Wayne streets, 4 inches diameter.

In Junction avenue, from Williams to Griggs streets, 6 inches diameter.

In Buchanan street, from Main to South streets, 4 inches diameter.

In Collett street, from Main to Griggs street, 4 inches diameter.

The fire-hydrants rented by said city, as hereinafter stated, shall be of modern and appropriate style and good efficiency, with frost jacket, and with double delivery, fitted to connect with the hose couplings now in use by the fire department of said city.

Said fire-hydrants so rented by said city shall be set by the said water company on whatever corner of the intersection it may select, but in all cases on the side of the street nearest to the main with which they are to connect; and they are hereby located as follows:

102 1. At the intersection of Woodbury and Franklin streets.

2. At the intersection of Woodbury and Walnut streets.

3. At the intersection of Woodbury and Vermilion streets.

4. At the intersection of Clay and Franklin streets.

5. At the intersection of Tincher and Denmark streets.

6. In Franklin street, at the north side of the right of way of the I. B. & W. railway.
7. In Vermilion street, at the south side of the right of way of the I. B. & W. railway.
8. At the intersection of Lincoln and Denmark streets.
9. At the intersection of Lincoln and Sheridan streets.
10. At the intersection of Lincoln and Grant streets.
11. At the intersection of Lincoln and Chandler streets.
12. At the intersection of Williams street and Harmon avenue.
13. At the intersection of Williams and Robinson streets.
14. At the intersection of Williams and Gilbert streets.
15. At the intersection of Williams and Oak streets.
16. At the intersection of Williams and Franklin streets.
17. At the intersection of Williams and Walnut streets.
18. At the intersection of Williams and Vermilion streets.
19. At the intersection of Williams and Hazel streets.
20. At the intersection of Williams and Jackson streets.
21. At the intersection of Williams and Depot streets.
22. At the intersection of Williams and Section streets.
23. At the intersection of Wellington and Junction streets.
24. At the intersection of Wellington and Collett streets.
25. In Harmon avenue, at the north side of the right of way of the I. B. & W. railway.
26. At the intersection of Kimber and Grant streets.
27. At the intersection of Cherry and Jackson streets.
28. In Franklin street, half way between Williams and Seminary streets.
103 29. In Vermilion street, half way between Williams and Seminary streets.
30. At the intersection of Ann and Gilbert streets.
31. At the intersection of Seminary and Grant streets.
32. At the intersection of Seminary street and Harmon avenue.
33. At the intersection of Seminary and Gilbert streets.
34. At the intersection of Seminary and Franklin streets.
35. At the intersection of Seminary and Vermilion streets.
36. At the intersection of Seminary and Jackson streets.
37. At the intersection of Seminary and Collett streets.
38. At the intersection of Madison street and Harmon avenue.
39. At the intersection of Madison and Robinson streets.
40. At the intersection of Madison and Gilbert streets.
41. At the intersection of Madison and Pine streets.
42. At the intersection of Madison and Franklin street.
43. At the intersection of Madison and Walnut streets.
44. At the intersection of Madison and Vermilion streets.
45. At the intersection of Madison and Hazel streets.
46. At the intersection of Madison and Jackson streets.
47. At the intersection of Madison and Depot streets.
48. At the intersection of Herman and Collett streets.
49. At the intersection of Harrison and Franklin streets.
50. At the intersection of Harrison and Walnut streets.
51. At the intersection of Harrison and Vermilion streets.

52. At the intersection of Harrison and Hazel streets.
53. At the intersection of Harrison and Jackson streets.
54. At the intersection of Harrison and Depot streets.
55. In Vermilion street, at the corner of the alley between Harrison and North streets.
56. At the intersection of North and Robinson streets.
104 57. At the intersection of North and Pine streets.
58. At the intersection of North and Franklin streets.
59. At the intersection of North and Walnut streets.
60. At the intersection of North and Vermilion streets.
61. At the intersection of North and Hazel streets.
62. At the intersection of North and Jackson streets.
63. At the intersection of North and Depot streets.
64. At the intersection of North street (extended) and Collett street.
65. In Franklin street, at the corner of the alley between North and Main streets.
66. In Walnut street, at the corner of the alley between North and Main streets.
67. At the intersection of Van Buren alley and Vermilion street.
68. At the intersection of Van Buren alley and Hazel street.
69. At the intersection of Van Buren alley and Depot streets.
70. At the intersection of Main and Pine streets.
71. In Main street, half way between Franklin and Pine streets.
72. At the intersection of Main and Franklin streets.
73. At the intersection of Main and Walnut streets.
74. In Main street, at the corner of the First national bank.
75. At the post-office corner.
76. At the intersection of Main and Hazel streets.
77. In Main street, at the corner of the alley between Hazel and Jackson streets.
78. At the intersection of Main and Jackson streets.
79. At the intersection of Main and Depot streets.
80. At the intersection of Main and Gray streets.
81. At the intersection of Main and McDonald streets.
105 82. At the intersection of Main and Park streets.
83. At the intersection of Main and Fremont streets.
84. At the intersection of Main and Clark streets.
85. At the intersection of Main and Buchanan streets.
86. At the intersection of Main and Collett streets.
87. At the intersection of South and Vermilion streets.
88. At the intersection of South and Hazel streets.
89. At the intersection of South and Jackson streets.
90. At the intersection of South and Gray streets.
91. At the intersection of South and Park streets.
92. At the intersection of South and Elizabeth streets.
93. At the intersection of South and Buchanan streets.
94. At the intersection of Green and Hazel streets.
95. At the intersection of Green and College streets.
96. At the intersection of Chestnut and College streets.
97. At the intersection of Chestnut and Park streets.
98. At the intersection of Chestnut and Elizabeth streets.

99. At the intersection of Pearl and Elizabeth streets.

100. At the intersection of Wayne and Elizabeth streets.

Written notice being given by said company to said city of Danville, there shall be a test of the power and capacity of said water works on their completion, when they shall throw from separate hydrants in the business portion of said city, six simultaneous fire streams, through a fifty-feet section of hose and a one-inch nozzle, to the height of one hundred feet, and when they shall throw at another time from separate hydrants in other portions of the said city four simultaneous effective fire streams: Provided, however, that nothing in this section shall be so construed as to operate against the full force and effect of section 9 and that part of section 2 of the original ordinance which provides for the laying of mains of suitable size to furnish an abundant supply of water for present and future requirements.

106 2. This ordinance shall become binding as a part of the contract existing between the city of Danville and the Danville Water Company in the event that said water company shall, within ten days from the passage and publication of this ordinance, file with the city clerk of said city its written acceptance of it.

3. All ordinances and resolutions and parts of ordinances or resolutions in conflict herewith are hereby repealed, and this ordinance shall take effect at its passage and publication.

Passed by city council, May 1st, A. D. 1883. Approved June 2d, 1883.

L. T. DICKASON, *Mayor.*

Attest:

[SEAL.] A. C. FREEMAN, *City Clerk.*

And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 7th day of June, A. D. 1883, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the 8th day of June, A. D. 1883; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for an extension of the pipe system of the Danville Water Company, contracting with it for an additional public fire-hydrant, and locating the free public fountain.

"Be it ordained by the city council of the city of Danville, in manner following, that is to say:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to extend its pipe system by lay-

107 ing a six-inch water main from the intersection of Griggs street and Junction street northwardly seven hundred feet toward the car shops of the Chicago and Eastern Illinois Railroad Company; and that the city of Danville further requests and hereby requires the

Danville Water Company to put up at the end of the said extension hereinbefore required to be made additional fire-hydrants of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882; and the city of Danville hereby rents of the Danville Water Company the said additional fire-hydrant for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the term of thirty years from the passage of this ordinance, and agrees and binds itself to pay therefor to the Danville Water Company at the rate of sixty-two and fifty-hundredths dollars per annum, beginning from the date when such hydrant shall be put in successful operation, in quarter-yearly installments on the first days of February, May, August and November of each year, and terminating upon the expiration of the said term of thirty years, or upon the purchase of the said works and their privileges and property by the said city.

"SECTION 2. This ordinance shall become binding as a contract on the said city of Danville in the event that the Danville Water Company shall within ten days from the passage and publication of this ordinance file with the city clerk its written acceptance of it.

"SECTION 3. The Danville Water Company shall erect the free public fountain provided for by the eleventh section of the said ordinance of November 9th, 1882, in the center of the public square in said city of Danville.

"Passed and approved this 7th day of June, A. D. 1883.

"(Signed) L. T. DICKASON, *Mayor.*

"Attest: A. C. FREEMAN, *City Clerk.*"

And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with
108 the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the seventh day of August, A. D. 1884, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the 15th day of August, A. D. 1884; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for extending the pipe system of the Danville Water Company and renting of it two additional hydrants.

"Be it ordained by the city council of the city of Danville, in manner following, that is to say:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to extend its pipe system along North street, to reach the places on said street hereinafter described, and that the city of Danville further requests and hereby requires the Danville Water Company to put two additional fire-hydrants of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882; and in consideration of the compliance, by the Danville Water Company,

with the foregoing requests and requirements, the city of Danville hereby rents of the Danville Water Company, the said two additional hydrants located in the following-described places, to wit:

"No. 102. At the intersection of North and Hayes street.

"No. 103. At the intersection of Harrison and Mill streets.

"And the city of Danville agrees and binds itself to pay therefor to the Danville Water Company for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the term of thirty years from the passage of this ordinance, at the rate of sixty-two dollars and fifty cents per hydrant per annum, beginning from the date when such hydrants shall
109 respectively be put into successful operation, in quarter-yearly installments, on the first days of February, May, August and November of each year, and terminating upon the expiration of the said term of thirty years or upon the purchase of said works and their privileges and property by the said city.

"2. This ordinance shall become binding as a contract, of the said city of Danville in event that the Danville Water Company shall, within ten days from the publication of this ordinance, file with the city clerk its written acceptance of it.

"Passed and approved August 7th, A. D. 1884."

And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defe[illegible] a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the first day of April, A. D. 1886, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the ninth day of April, A. D. 1886; which said ordinance is in the words and figures following, to wit:

An ordinance providing for the extension of the pipe system of the Danville Water Company and renting of it four additional fire-hydrants.

Be it ordained by the city council of the city of Danville, Illinois, in the following manner, that is to say:

1. That the city of Danville requests and hereby requires the Danville Water Company to extend its pipe system, by laying the following-described water mains: A four-inch main in Wayne street between the Wabash hospital and Buchanan street; a four-inch main in Oak street between Seminary and Ann street; a six-inch main in Buchanan street between Wayne and Commercial streets; a six-inch main in Collett street, between Griggs street and the first alley
110 north of the I. B. & W. railway tracks. And hereby requires the Danville Water Company to put up at the places hereinafter named, four additional fire-hydrants of the kind required by the water-works ordinance of the city of Danville, passed and approved on November 9th, 1882; and in consideration of the compliance of the Danville Water Company with the foregoing requests and require-

ments, the city of Danville hereby rents of the Danville Water Company the four additional fire-hydrants, to wit:

No. 104. At the intersection of Oak and Ann streets.

No. 105. At the intersection of Buchanan and Commercial streets.

No. 106. At the intersection of Junction avenue and I. B. & W. railway tracks.

No. 107. At the intersection of Collett street and first alley north of I. B. & W. railway track.

And the city of Danville agrees and binds itself to pay therefor to the Danville Water Company for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the term of thirty years from the passage of this ordinance, at the *at the* rate of sixty-two dollars and fifty cents per hydrant per annum, beginning with the date when said hydrants shall respectively be put up and connected with the water works of the said water company, in quarter-yearly installments, on the first days of February, May, August and November of each year, subject to termination by the purchase of the said water works by the city of Danville.

2. This ordinance shall become binding as a contract on the city of Danville, in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance of it.

Passed and approved this first day of April, 1886.

JOHN BEARD, *Mayor.*

Attest: A. C. FREEMAN, *City Clerk.*

111 And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the nineteenth day of June, A. D. 1890, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the 24th day of June, A. D. 1890; which said ordinance is in the words and figures following, to wit:

An ordinance providing for extending the water mains of the Danville Water Company and renting of it five additional hydrants.

Be it ordained by the city council of the city of Danville, Illinois, in the manner following—that is to say:

1. That the city of Danville requests and hereby requires the Danville Water Company to extend its water mains by laying a four-inch main in Vermilion street from Woodbury to English street, and by laying a four-inch main in Franklin street from Woodbury street to Townsend avenue, and that the city of Danville hereby requires the said water company to put up at the places hereinafter named five additional fire-hydrants of the kinds required by the water-works ordinance of the city of Danville, passed

and approved November 9th, 1882, and in consideration of the compliance by the Danville Water Company with the foregoing request and requirements the city of Danville hereby rents from the Danville Water Company the said five additional fire-hydrants, to wit:

No. 108. At the intersection of Vermilion street and Fairchild street.

No. 109. At the intersection of Vermilion street and Townsend avenue.

No. 110. At the intersection of Vermilion street and English street.

112 No. 111. At the intersection of Franklin street and Fairchild street.

No. 112. At the intersection of Franklin street and Townsend avenue.

And the city of Danville agrees and binds itself to pay therefor to the Danville Water Company for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the unexpired term of thirty years from November 9th, 1882, and from the date of the passage of this ordinance, at the rate of sixty-two dollars and fifty cents ($62.50) per hydrant per annum, beginning with the date when such hydrants shall respectively be put up and connected with the water works of the said water company, in quarter-yearly installments, on the first day of February, May, August and November of each year, subject to termination by the purchase of said water works by the city of Danville.

2. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall within twenty days from the publication of this ordinance, file with the city clerk its written acceptance thereof.

Passed and approved June 19th, 1890.

W. R. LAWRENCE, *Mayor.*

Attest: JOSEPH SHATZ, *City Clerk.*

And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with
113 the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 20th day of August, A. D. 1890, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the 23rd day of August, A. D. 1890; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for extending the water mains of the Danville Water Company and renting of it three additional hydrants.

Be it ordained by the city council of the city of Danville, Illinois, in the manner following—that is to say:

1. That the city of Danville requests and hereby requires the

Danville Water Company to extend its water mains by laying a four-inch water main in Hazel street, from Davis street to Fairchild street, and that the city of Danville hereby requires the said water company to put up at the places hereinafter named three additional fire-hydrants of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882, and in consideration of the compliance of the Danville Water Company with the foregoing request and requirements the city of Danville hereby rents of the Danville Water Company the said three additional fire-hydrants, to wit:

No. 113. At crossing of Clay and Hazel streets.

No. 114. At crossing of Woodbury and Hazel streets.

No. 115. At crossing of Fairchild and Hazel streets.

And the city of Danville agrees and binds itself to pay therefor to the Danville Water Company for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the unexpired term of thirty years from November 9th, 1882, and from the date of the passage of this ordinance, at the rate of sixty-two dollars and fifty cents (62.50) per hydrant per annum, beginning with date when said hydrants shall be respectively put up and connected with the water works of the said water company in quarter-yearly installments, on the first days of February,
114 May, August and November of each year, subject to termination by the purchase of said water works by the city of Danville.

2. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance thereof.

Passed and approved August 20th, 1890.

W. R. LAWRENCE, *Mayor.*

Attest: JOSEPH SHATZ, *City Clerk.*"

And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 25th day of September, A. D. 1890, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the — day of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

"An ordinance to amend section 1 of an ordinance entitled 'An ordinance providing for extending the water mains of the Danville Water Company and renting of it three additional hydrants,' passed and approved August 20th, 1890.

1. Be it ordained by the city council of the city of Danville, That section 1 of an ordinance, entitled 'An ordinance providing for ex-

tending the water mains of the Danville Water Company and renting of it three additional hydrants, passed and approved August 25th, 1890, be, and the same hereby is, amended so as to locate fire-hydrant No. 113 at the crossing of Hazel street and the first
115 alley south of the Cleveland, Cincinnati, Chicago and St. Louis railroad, and the said Danville Water Company is hereby authorized and requested to so locate said fire-hydrant at the above-named point instead of at the crossing of Clay and Hazel streets, as prescribed in said original ordinance.

2. This ordinance to take effect immediately after its passage and approval.

Passed and approved September 25th, A. D. 1890.

W. R. LAWRENCE, *Mayor.*

Attest: JOSEPH SHATZ, *City Clerk.*"

And afterwards, on the third day of September, A. D. 1891, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the 18th day of September, A. D. 1891; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for extending the water mains of the Danville Water Company and the renting of it three additional hydrants.

1. Be it ordained by the city council of the city of Danville, That the city of Danville requests and hereby requires the Danville Water Company, of Danville, Illinois, to extend its water mains by laying a six-inch water main from a convenient and proper point to the inclosure of the shops of the Chicago and Eastern Illinois Railroad Company at the Danville junction, in Danville, Illinois.

2. That the said city of Danville hereby further requires the said Danville Water Company to put at the places hereinafter specified three additional fire-hydrants of the kind required by the ordinance of the said city of Danville relative to the water works of the said Danville Water Company, passed and approved on the 9th day of November, 1882, that is to say:

116 No. 116. One hundred and seventy-two feet east of present main and southeast of hydrant No. 101.

No. 117. One hundred and seventy-two feet west of present main and southwest of hydrant No. 101.

No. 118. One hundred feet north and two hundred feet east of hydrant No. 101.

3. That in consideration of the compliance of the said Danville Water Company with the foregoing request and requirements, the said city of Danville hereby rents of and agrees to pay to the said Danville Water Company for the said three additional hydrants during the unexpired term of thirty years from the ninth day of November, 1882, at the rate of sixty-two dollars and fifty cents ($62.50) annually for each hydrant, payable in quarter-

yearly installments, commencing when the said hydrants are respectively in place and ready for use, for the uses and subject to the terms and conditions of the said ordinance, passed and approved on the 9th day of November, 1882.

4. That the said quarter-yearly payments shall be made the first of February, the first of May, the first of August and the first of November in each year, and subject to termination by the purchase of the water works aforesaid by the said city of Danville.

5. That this ordinance shall become binding as a contract upon its passage, approval and publication: provided, however, that the said Danville Water Company shall, within ten days from the publication hereof, file with the city clerk of the said city of Danville, an acceptance in writing of all its terms, conditions and provisions.

Passed September 3rd, 1891.

Approved September 17th, 1891.

JOHN BEARD, *Mayor.*

Attest: JOSEPH SHATZ, *City Clerk.*"

117 And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 5th day of November, A. D. 1891, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the 13th day of November, A. D. 1891: which said ordinance is in the words and figures following, to wit:

"An ordinance providing for extending the pipe system of the Danville Water Company and renting of it another fire-hydrant.

Be it ordained by the city council of the city of Danville in manner following—that is to say:

1. That the city of Danville requests and hereby requires the Danville Water Company to extend its pipe system to reach the southwest corner of Madison and Mill-streets, and to put up at such corner one additional fire-hydrant of the kind required by the water-works ordinance of the city of Danville, passed and approved November ninth, 1882, and in consideration of the compliance by the said water company with the foregoing request and requirements, the said city of Danville, hereby rents the said hydrant for the uses and subject to the conditions stated in the said ordinance of November ninth, 1882, for and during the unexpired term of thirty years from the ninth day of November, 1882, and agrees and binds itself to pay therefor at the rate of sixty-two dollars and fifty cents ($62.50) per annum, beginning from the date when such hydrant shall be put into successful operation, in quarter-yearly installments, on the first days of February, May, August and November of each year, and
118 terminating upon the expiration of the said term of thirty years from the 9th day of November, 1882, or upon the pur-

chase of the said works and their privileges and property by the said city.

2. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance of it.

Passed November fifth, 1891.

Approved November 11th, 1891.

JOHN BEARD, *Mayor.*

Attest: JOSEPH SHATZ, *City Clerk.*"

And plaintiff avers that within twenty days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 20th day of October, A. D. 1892, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was published according to law on the — day of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for extending the water mains of the Danville Water Company and renting of it two additional fire-hydrants.

"Be it ordained by the city council of the city of Danville:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to extend its water mains by laying a six-inch main in Logan avenue from Lincoln street to Kimber street.

"SECTION 2. That the said city of Danville hereby further requires the said Danville Water Company to put at the places here-
119 inafter specified two additional fire-hydrants, of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882; said two additional fire-hydrants to be located as follows:

"No. 120. At the intersection of Logan avenue with the alley running into Logan avenue about midway between Lincoln and Kimber streets.

"No. 121. At the intersection of Logan avenue and Kimber street.

"SECTION 3. That in consideration of the compliance of the said Danville Water Company with the foregoing requests and requirements, the said city of Danville hereby rents the said two hydrants for the uses and subject to the conditions stated in the said ordinance of November ninth, 1882, for and during the unexpired term of thirty years from the 9th day of November, 1882, and agrees and binds itself to pay therefor at the rate of sixty-two dollars and fifty cents ($62.50) per annum for each hydrant, beginning from the date when said hydrants are respectively in place and ready for

use, in quarter-yearly installments on the first days of February, May, August and November of each year, and subject to termination by the purchase of the water works by the said city.

"SECTION 4. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance thereof.

"Passed and approved this the 20th day of October, A. D. 1892.

"JOHN BEARD, *Mayor.*

"Attest: JOSEPH SHATZ, *City Clerk.*"

And plaintiff avers that within ten days from the passage and publication of said last-named ordinance plaintiff filed with
120 the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the twenty-first day of June, A. D. 1894, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the — day of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for extending the water mains of the Danville Water Company, renting of it thirty-one additional fire-hydrants, and contracting with said company for a lower rental per hydrant for all further hydrants to be hereafter rented than has heretofore existed.

"Be it ordained by the city council of the city of Danville, Ills.:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to extend its water mains by laying a six-inch main as follows:

"On Collett street, from Lyford street to Wabash railroad, thence along Wabash railroad to Fairchild street, thence on Fairchild street to Martin street.

"On East Madison street, from Collett street to a street as yet unnamed, which intersects East Madison about half way between Collett street and Stony creek.

"On Gilbert street, from Madison street to English street.

"On Hazel street, from Fairchild street to English street.

"On English street, from Jackson street to Vermilion street.

"On Vermilion street, from English street to Center street.

"On Sherman street, from Lincoln street to Tincher street.

"On Chandler street, from Lincoln street to Tincher street.
121 "On Kimber street, from Grant street to Sherman street.

"On the street as yet unnamed (which intersects Williams street about half way between Washington avenue and Section street), from Williams to Cherry street.

"On Buchanan street, from Commercial street to South street.

"On Buchanan street, from Wayne street to West street.

"On Jackson street, from Williams street to English street.

"On Walnut street, from Woodbury street to Penn avenue, if extended.

"On Wellington street, from Collett street to Kimball street.

"On Lahr street, from Jackson street to Washington street.

"On Walnut street, from Williams street to Davis street.

"On Commercial street, from Buchanan street to Illinois street.

"SECTION 2. That the city of Danville hereby further requires the said Danville Water Company to put at the places hereinafter specified thirty-one additional fire-hydrants, of the kind required by the water-works ordinance of the city of Danville passed and approved November 9th, 1882; said thirty-one additional fire-hydrants to be located as follows:

No. 122. At the intersection of Martin and Fairchild streets.

No. 123. At the intersection of Kimball and Fairchild streets.

No. 124. At the intersection of East Madison street and the street as yet unnamed, which intersects East Madison street about half way between Collett street and Stony creek.

—. 125. At the intersection of Gilbert and Clay streets.

No. 126. At the intersection of Gilbert and Fairchild streets.

No. 127. At the intersection of Gilbert street and Townsend avenue.

No. 128. At the intersection of Gilbert and English streets.

No. 129. At the intersection of Hazel street and the first alley south of Penn avenue.

122 "No. 130. At the intersection of Hazel and English streets.

"No. 131. At the intersection of Vermilion and Center streets.

"No. 132. At the intersection of Sherman and Tincher streets.

"No. 133. At the intersection of Chandler and Tincher streets.

"No. 134. At the intersection of Sherman and Kimber streets.

"No. 135. At the intersection of Cherry street with the street as yet unnamed, which intersects Williams street about half way between Washington avenue and Section street.

"No. 136. At the intersection of Buchanan and Green streets.

"No. 137. At the intersection of Buchanan and West streets.

"No. 138. At the intersection of East Main street and Bowman avenue.

"—. 139. At the intersection of East Main and Cottage streets.

"No. 140. On Walnut street, about half way between Williams and Madison streets.

"No. 141. On Hazel street, about half way between Williams and Madison streets.

"No. 142. At the intersection of Jackson and Woodbury streets.

"No. 143. At the intersection of Jackson and Davis streets.

"No. 144. At the intersection of Jackson and Sidell streets.

"No. 145. At the intersection of Jackson and English streets.

"No. 146. At the intersection of Walnut street and the first alley south of Townsend avenue.

"No. 147. At the intersection of Walnut street and Penn avenue (if extended).

"No. 148. At the intersection of Walnut and Davis streets.
"No. 149. At the intersection of Kimball and Wellington streets.
"No. 150. At the intersection of Main and Gilbert streets.
"No. 151. At the intersection of Lahr and Washington streets.
"No. 152. At the intersection of Commercial and Illinois streets.

"SECTION 3. That in consideration of the compliance of the said Danville Water Company with the foregoing requests and
123 requirements, the said city of Danville hereby rents the said thirty-one hydrants for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the unexpired term of thirty years from the 9th day of November, 1882, and agrees and binds itself to pay therefor, at the rate of fifty dollars ($50) per annum for the first nineteen of the said thirty-one hydrants, and at the rate of forty dollars ($40) each per annum for the last twelve of said thirty-one hydrants, beginning from the date when said hydrants are respectively in place and ready for use, in quarter-yearly installments on the first days of February, May, August and November of each year, and subject to termination by the purchase of the water works by the said city.

"SECTION 4. That the rents to be paid to said water company by said city for all further fire-hydrants to be hereafter rented, in excess of the thirty-one herein specified, shall be forty dollars ($40) each per annum.

"SECTION 5. Nothing in this ordinance shall operate to effect in any way any of the provisions of the ordinance heretofore passed by the said city relative to the Danville Water Company, except to the extent of the reduction in the rental of the thirty-one hydrants herein rented and all further hydrants to be hereafter rented, as hereinbefore provided.

"SECTION 6. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall, within twenty days from the publication of this ordinance, file with the city clerk its written acceptance hereof.

"Passed June 21st, A. D. 1894.

"Approved June 28th, A. D. 1894.

"JAMES SLOAN, *Mayor.*

"Attest: R. E. LLOYD, *City Clerk.*"

124 And plaintiff avers that within twenty days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 26th day of July, A. D. 1894, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the — of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

"An ordinance amending an ordinance entitled 'An ordinance providing for extending the water mains of the Danville Water Company, renting of it thirty-one additional fire-hydrants, and contracting with said company for a lower rental per hydrant for said thirty-one additional fire-hydrants, and for all further hydrants to be hereafter rented, than has heretofore existed,' passed June 21st, 1894.

"Be it ordained by the city council of the city of Danville, Illinois:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to make the following changes in the extension of water mains specified in the said ordinance passed June 21st, 1894, to wit:

"For the extension on Jackson street from Sidell street to English street, and on English street from Jackson street to Hazel street, substitute an extension on Walnut street from Penn avenue (if extended) to Center street, and on Center street from Walnut street to Vermilion street.

"For the extension on Gilbert street from Madison street to English street, substitute extension on Gilbert street from Williams street to English street.

125 "SECTION 2. That the said city of Danville hereby further requires the said Danville Water Company to change the location of hydrant 145 from the intersection of Jackson and English streets as specified in the ordinance passed June 21st, 1894, to the intersection of Walnut street and Center street.

"SECTION 3. This ordinance shall become binding as a contract on the said city of Danville in the event that the Danville Water Company shall, within twenty days from the passage of this ordinance, file with the city clerk its written acceptance thereof.

"Passed July 26th, A. D. 1894.

"Approved August 1st, A. D. 1894.

"JAMES SLOAN, *Mayor.*

"Attest: R. E. LLOYD, *City Clerk.*"

And plaintiff avers that within twenty days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the ninth day of August, A. D. 1894, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then mayor of said defendant and was duly published according to law on the — day of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

"An ordinance amending an ordinance entitled 'An ordinance providing for extending the water mains of the Danville Water Company, renting of it thirty-one additional fire-hydrants, and contracting with said company for a lower rental per hydrant for said thirty-one additional fire-hydrants and for all further
126 hydrants to be hereafter rented than has heretofore existed,' passed June 21st, 1894.

"Be it ordained by the city council of the city of Danville, Illinois:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to make the following change in the extension of water mains specified in the said ordinance passed June 21st, 1894, to wit:

"For the extension on Wellington street from Collett street to Kimball street, substitute an extension of Clarence street from Collett street to Kimball street.

"SECTION 2. That the said city of Danville hereby further requires the said Danville Water Company to change the location of hydrant No. 149 from the intersection of Kimball and Wellington streets, as specified in the ordinance passed June 21st, 1894, to the intersection of Kimball and Clarence streets.

"SECTION 3. This ordinance shall become binding as a contract on the said city of Danville in the event that the said Danville Water Company shall, within twenty days from the passage of this ordinance, file with the city clerk its written acceptance hereof.

"Passed August 9th, A. D. 1894.

"Approved August 10th, A. D. 1894.

"JAMES SLOAN, *Mayor.*

"Attest: R. E. LLOYD, *City Clerk.*"

And plaintiff avers that within twenty days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And afterwards, on the 18th day of October, A. D. 1894, there was duly and lawfully passed by said city council a certain other ordinance, which was afterwards duly approved by the then
127 mayor of said defendant and was duly published according to law on the — day of ——, A. D. 18—; which said ordinance is in the words and figures following, to wit:

"An ordinance providing for extending the water mains of the Danville Water Company and renting of it six additional fire-hydrants.

"Be it ordained by the city council of the city of Danville, Illinois:

"SECTION 1. That the city of Danville requests and hereby requires the Danville Water Company to extend its water mains by laying mains as follows:

"A 6" main on Robinson street from Williams street to Clay street.

"A 6" main on Douglas avenue from Buchanan street to Illinois street.

"A 6" main on South Vermilion street from South street to Green street (if extended).

"A 6" main on Walnut street from Davis street to Woodbury street, and

"A 4" main on Cottage street from East Main to Grove street.

"SECTION 2. That the said city of Danville hereby further requires the said Danville Water Company to put up at the places hereinafter specified six additional fire-hydrants, of the kind required by the water-works ordinance of the city of Danville, passed and approved November 9th, 1882; said six additional fire-hydrants to be located as follows:

"No. 153. At the intersection of Davis and Robinson streets;

"No. 154. At the intersection of Clay and Robinson streets;

"No. 155. At the intersection of South Vermilion and Green street (if extended);

"No. 156. At the intersection of Douglas avenue and Illinois street;

128 "No. 157. At the intersection of Walnut and Clay streets;

"No. 158. At the intersection of Cottage and Grove streets;

"SECTION 3. That in consideration of the compliance of the said water company with the foregoing requests and requirements, the said city of Danville hereby rents the said six hydrants, for the uses and subject to the conditions stated in the said ordinance of November 9th, 1882, for and during the unexpired term of thirty years from the 9th day of November, 1882, and agrees and binds itself to pay therefor at the rate of forty dollars ($40) per annum for each of the said six hydrants, beginning from the date when said hydrants are respectively in place and ready for use, in quarter-yearly installments on the first days of February, May, August and November of each year, and subject to termination by the purchase of the water works by the said city.

"SECTION 4. This ordinance shall become binding as a contract on the city of Danville in the event that the Danville Water Company shall, within twenty days from the passage of this ordinance, file with the city clerk its written acceptance hereof.

"Passed and approved October 18, A. D. 1894.

"JAMES SLOAN, *Mayor.*

"Attest: R. E. LLOYD, *City Clerk.*"

And plaintiff avers that within twenty days from the passage and publication of said last-named ordinance plaintiff filed with the city clerk of said defendant a written acceptance of the terms, obligations, and conditions of said ordinance.

And plaintiff avers that after the passage of said several ordinances hereinbefore alleged to have been passed respectively on the 9th day of November, 1882, the first day of May, A. D. 1883, and the 7th day of June, A. D. 1883, plaintiff duly built the said water works in

129 all respects as required by the provisions of said several ordinances and erected the said several hydrants and did all

other things necessary and required of it to be done according to the terms and conditions of said several ordinances, and afterwards, to wit, on the 29th day of September, A. D. 1883, the test provided for in said ordinance was duly made, and said city council of said defendant, on said 29th day of September, A. D. 1882, by an order of resolution duly passed and entered of record, accepted said water works as being in full compliance with the terms and conditions of said ordinance.

And plaintiff further avers that from time to time and after the passage of each of — several ordinances so alleged to have been passed since said June 7th, 1883, plaintiff has made said several extensions of its pipes as required by said ordinances respectively and erected and has ever since said erection maintained said hydrants as required by the terms and conditions of said ordinances respectively and has kept the same supplied with water as provided in said several ordinances, and said defendant has had the full, free, and unrestricted use of said hydrants and of said water for the uses and purposes in said several ordinances mentioned, and on, to wit, the first day of May, A. D. 1895, there were erected and in use by said defendant within the corporate limits thereof, to wit, one hundred and fifty-eight (158) of said hydrants, of which number, to wit, one hundred (100) were erected under and by virtue of said ordinances passed November 9th, A. D. 1885, and May first, 1883; to wit, one was erected under and by virtue of said ordinance passed June 7th, 1883; to wit, two were erected under said ordinance passed August 7th, 1884; to wit, four were erected under and by virtue of said ordinance passed April 1st, 1886; to wit, five were erected under & by virtue of said ordinance passed June 19th, A. D. 1890; to wit, three were erected under and by virtue of said ordinances passed August 20th, A. D. 1890, and September 25th, 1890; to wit, three
130 were erected under and by virtue of said ordinance passed September 3rd, 1891; to wit, one was erected under and by virtue of said ordinance passed November 5th, 1891; to wit, two were erected under and by virtue of said ordinance passed October 22nd, A. D. 1892; to wit, thirty-one were erected under and by virtue of the said several ordinances passed respectively June 21st, A. D. 1894, July 26th, 1894, August 9th, 1894, and, to wit, six were erected under and by virtue of said ordinance passed October 18th, A. D. 1894.

And plaintiff further avers that from and including the first day of August, A. D. 1895, until and including the 30th day of October, A. D. 1895, each of said aforementioned hydrants *were* kept supplied with water by plaintiff in all respects as required by the terms and conditions of said several ordinances, and said defendant had during said time the full, free, and unrestricted use of said hydrants and of said water, as in and by the terms of said ordinances as provided, by means whereof said defendant became liable to pay said plaintiff, to wit, the sum of twenty-six hundred and twenty dollars and sixty-two cents ($2,620.62), on, to wit, the first day of November, A. D. 1895, and, being so liable, afterwards, to wit, on the 10th day of

November, A. D. 1895, the county aforesaid undertook and promised to pay the same to the plaintiff when thereunto afterwards requested.

Yet the said defendant, though often requested, has not as yet paid the same or any part thereof, but so to do has refused and still does refuse, to the damage of plaintiff five thousand dollars ($5,000.00), and therefore it brings its suit, etc.

REMY & MANN AND
W. R. LAWRENCE,
Att'ys for Pl'tff.

Filed March 21, 1896.
M. J. BARGER, *Clk.*

131 On the 21st day of March, 1896, there *was* filed in the office of the clerk of said court the pleas of defendant to the plaintiff's amended declaration in the words and figures following, to wit:

STATE OF ILLINOIS, }
Vermilion County, } *ss.:*

In the Circuit Court of said County, to the January Term, A. D. 1896.

DANVILLE WATER CO. }
vs. } Assumpsit.
CITY OF DANVILLE. }

Pleas of the Defendant to the Amended Declaration of the Plaintiff.

And the said defendant, The City of Danville, by W. J. Calhoun and G. F. Rearick, its attorneys, comes and defends the wrong and injury when, etc., at, etc., and as to all of the several said supposed promises and undertakings in the said amended declaration mentioned, except as to the sum of nineteen hundred and thirty dollars ($1,930.00), parcel of the said several sums of money in the said amended declaration mentioned, says that it, the said plaintiff, ought not to have or maintain its aforesaid action thereof against this defendant except as to the said sum of nineteen hundred and thirty dollars ($1,930.00), parcel, etc., as aforesaid, because it says—

"That the said plaintiff at all the times mentioned in its said amended declaration was and now still is engaged in the public business of supplying said city and its inhabitants with water through the means of a distributing plant and pipes and mains laid in the streets of said city under and by virtue of authority granted in and by the ordinance in said amended declaration mentioned.

That while the said plaintiff was so engaged in said business, viz., *that* — 19th day of January, A. D. 1895, and after the passage
132 and approval of each of the ordinances mentioned in the said amended declaration, the city council of the said city of Danville, as it lawfully might do, under and by virtue of an act of the General Assembly of the State of Illinois approved June 6th, 1891, and in force July 1st, A. D. 1891, entitled—

"An act to enable cities, towns, and villages incorporated under

any general or special law of this State to fix the rates and charges for the supply of water furnished by any individual, company, or corporation to any such city, town, or village and the inhabitants thereof," as well as under and by virtue of other full, competent, and complete legal authority, duly passed an ordinance prescribing the maximum rates and charges for the supply of water to be furnished by the plaintiff to the defendant on and after the 1st day of May, A. D. 1895; which said ordinance is in the words and figures following, to wit:

Ordinance No. 517.

An ordinance prescribing the maximum rates and charges for the supply of water furnished by the Danville Water Company to the city of Danville.

Whereas after a careful comparison of the rates and charges paid by this city for the supply of water to this city for public uses, with the rates and charges paid therefor by other cities similarly situated, it is found that the rates charged by the Danville Water Company, (a corporation organized under the laws of the State of Illinois), and paid by this city to said company for the supply of water furnished by said company to this city for public uses, are unjust, excessive and unreasonable,

And whereas, under and by virtue of an act of the General Assembly of the State of Illinois, approved June 6th, A. D. 1891,
133 and in force July 1st, 1891, entitled: "An act to enable cities, towns and villages incorporated under any general or special law of this State to fix the rates and charges for the supply of water furnished by any individual, company or corporation, to any such city, town or village and the inhabitants thereof," as well as under and by virtue of other full, competent and complete legal authority, the city council of the city of Danville, Illinois (a municipal corporation organized under and by *the* virtue of the general laws of the State of Illinois), is empowered to prescribe by this ordinance the maximum rates and charges for the said supply of water furnished by the said corporation to this city,

And whereas after a full investigation of the matter, it is believed by the members of this council that the rates and charges hereinafter prescribed are just and reasonable,

Therefore be it ordained by the city council of the city of Danville, Illinois:

SECTION 1. That beginning with the first day of May, A. D. 1895, the rates and charges for the supply of water furnished by the Danville Water Company, a corporation as aforesaid, to the said city of Danville, for public uses, shall be as follows, viz:

For the first one hundred and forty (140) fire-hydrants, now being rented by said city from said company, and for the supply of water furnished by said water company, for public uses, by in and through said hydrants, and for which the said city is now paying said water company, the following rentals, viz: Seventy-five dollars ($75.00)

per year per hydrant, for the first one hundred (100) hydrants; sixty-two and one-half dollars ($62.50), per year, per hydrant for the next twenty-one of said hydrants, fifty dollars ($50.00) per year, per hydrant for the next nineteen (19) of said hydrants, said
134 Danville Water Company shall have and receive from said city of Danville, and said city of Danville shall pay said water company the uniform rate and charge of fifty dollars ($50.00) per hydrant, per annum, and no more.

And for the next twelve (12) fire-hydrants above the one hundred and forty (140) above mentioned, and which are now rented by said city from said water company, and for the supply of water furnished by the said water company for public uses, by, in and through said twelve (12) hydrants, and for all other fire-hydrants now rented or which may be hereafter rented from said company and for the supply of water for public uses, furnished or to be furnished by, in and through said hydrants, said Danville Water Company shall have and receive from said city of Danville, and said city of Danville shall pay said water company, the same rate as is now charged and paid for the same, viz; the rate of charge of forty dollars ($40.00) per hydrant, per annum, and no more.

And for the use of water for flushing the public sanitary sewers of said city, such as now built and connected with the pipes and water mains of said water company, and such as may be hereafter built and so connected, which said water has hitherto been furnished by said water company free of charge, said Danville Water Company shall have and receive, from said city of Danville, and said city of Danville shall pay said water company, at the rate of five cents (5c.) pr. one thousand gallons, and no more.

And for the use of water by, in and through the public drinking fountains now used by said city, and for which said water company is now furnishing water free of charge, said Danville Water Company shall have and receive, and said city shall pay said water company at the rate of five dollars ($5.00) per fountain per
135 annum, and no more.

And for water for any other use for which water is now taken by said city or for which water may be hereafter taken by said city from said water company, for public uses, other than as above specified, said Danville Water Company shall charge said city therefor at the same rates as are at that time charged by said water company to private consumers for the like service, which rate said city shall pay to said water company, therefor, and no more.

SECTION 2. That said city of Danville shall continue to take from said Danville Water Company all the supply of water now taken from it, but shall pay therefor only the rates and charges herein prescribed, all former ordinances and provisions to the contrary notwithstanding, and it is hereby made the duty of the city clerk to notify said water company of that fact by delivering to the superintendent of the water works of said company, in this city, a certified copy of this ordinance within five days (5) *days* after the same is signed by the mayor, or shall go into effect without his signature.

SECTION 3. In case said water company shall desire to make

application to the circuit court of Vermilion county, Illinois, for the purpose of having the question of the reasonableness of the rates and charges fixed herein, promptly determined, or for the purpose of having such rates and charges reviewed and determined by said circuit court, the corporation counsel is hereby authorized to enter the appearance of this city to such suit or cause as may be brought therefor, at the February term, A. D. 1895, of said court.

Passed January 17th, A. D. 1895.

Approved January 19th, A. D. 1895.

JAMES SLOAN,
Mayor of the City of Danville.

Attest: R. E. LLOYD, *City Clerk.*

136 Which said ordinance was duly deposited in the office of the city clerk of said city, and was afterwards, on, to wit, the 19th day of January, A. D. 1895, duly approved by the mayor of said city, and duly recorded by the city clerk of said city, in all respects as required by law.

And afterwards, within five days after the approval of said ordinance as aforesaid, the said city clerk, on, to wit, the 23rd day of January, A. D. 1895, delivered to the superintendent of said plaintiff a certified copy of said ordinance.

And the defendant further avers that the said plaintiff was duly notified of the passage and approval of said ordinance, and also of the fact that said city for the supply of water taken by the said city for public uses, viz., the supply for which the plaintiff now seeks to recover, and which was furnished in manner and form as alleged in said amended declaration, would pay no other or greater sums than those prescribed in the ordinance aforesaid, viz., the sum of fifty dollars per hydrant per annum for the first one hundred and forty (140) of said hydrants, and forty dollars per hydrant per annum for all other hydrants above that number; which said notice was given long before the said first day of May, A. D. 1895, and long before the said supply of water was furnished, viz., on, to wit, the 23rd day of January, A. D. 1895.

Wherefore the defendant alleges that the rates and charges to be made for the supply of water furnished by the said plaintiff to the said defendant, in manner and form as set forth by said plaintiff in said amended declaration, are the sum of nineteen hundred and thirty dollars ($1,930.00) and no more, and this sum the said defendant is ready and willing to pay.

And this the defendant is ready to verify; wherefore it prays judgment whether said plaintiff ought to have or maintain its
137 aforesaid action thereof against the defendant, except as to the said sum of $1,930.00, parcel, etc.

And for a further plea in this behalf, by leave of the court here first had and obtained, the defendant comes and defends the wrong and injury when, etc., and as to all of the said several supposed premises and undertakings in said amended declaration mentioned, except as to the said sum of nineteen hundred and thirty dollars (1,930.00), parcel of the said several sums of money in said

declaration mentioned, says that it, the said plaintiff, ought not to have or maintain its aforesaid action thereof against the said defendant, except as to the said sum of nineteen hundred and thirty dollars (1,930.00), parcel, etc., as aforesaid, because the defendant says:

That the said plaintiff at all the time- mentioned in its said amended declaration was, and now still is, engaged in the public business of supplying the said city and its inhabitants with water for public and private uses through the means of a distributing plant and pipes and mains laid in the streets of said city under and by virtue of the authority given in the ordinances in said amended declaration mentioned.

That the said several sums of hydrant rental mentioned in said amended declaration for the first one hundred and twenty-one (121) hydrants of the hydrants in said declaration mentioned and the rates and charges fixed in and by the said ordinances for the supply of water to be furnished to the said defendant by, in, and through the same, viz., the supply of water mentioned in said amended declaration as having been supplied in, by, and through the same, which said rates and charges as so fixed were the sum of seventy-five dollars per annum per hydrant for the first one hundred of said hydrants, and the sum of sixty-two and fifty-hun-
138 dredths dollars per hydrant per annum for the next twenty-one of said hydrants, were at the time of the passage of said ordinances and now still — in excess of the reasonable compensation to be made for the supply of water furnished by the said plaintiff to the said defendant during the three months mentioned in said amended declaration, and for the matters and things for which the plaintiff has in said amended declaration declared, and that the said rates and charges for said supply of water, viz., the supply of water furnished in manner and form as alleged in the declaration aforesaid, were, and now —, unjust, unreasonable, and excessive; and that the said ordinance- mentioned in said amended declaration, in so far as they attempted to fix the prices to be paid for the supply of water to be furnished — a long term of years, being voidable at the option of the city council of said city, and the said rates and charges aforesaid therein fixed being unjust, excessive, and unreasonable, the said city council of said city of Danville, after the passage and approval of each and all of the ordinances mentioned in said amended declaration, in view of all the foregoing facts, as it might lawfully do, on, to wit, the 17th day of January, A. D. 1895, passed an ordinance prescribing the maximum rates and charges for the supply of water furnished by the plaintiff to the said defendant for public uses, beginning with the first day of May, A. D. 1895; which said ordinance is in words and figures following, viz:

Ordinance No. 517.

An ordinance prescribing the maximum rates and charges for the supply of water furnished by the Danville Water Company to the city of Danville.

Whereas after a careful comparison with the rates and charges paid by this city for the supply of water to the city for public uses, with the rates and charges paid therefor by other cities similarly situated, it is found that the rates charged by the Danville Water Company (a corporation organized under the laws of the State of Illinois), and paid by this city to said company for the supply of water furnished by said company to this city for public uses, are unjust, excessive and unreasonable,

And whereas, under and by virtue of an act of the General Assembly of the State of Illinois, approved June 6th, A. D. 1891, and in force July 1st, A. D. 1891, entitled: "An act to enable cities, towns and villages incorporated under any general or special law of this State to fix the rates and charges for the supply of water furnished by any individual, company or corporation to any such city, town or village and the inhabitants thereof," as well as under and by virtue of other full, competent and complete legal authority, the city council of the city of Danville, Illinois, (a municipal corporation organized under and by virtue of the general laws of the State of Illinois,) is empowered to prescribe by this ordinance the maximum rates and charges for the said supply of water furnished by the said corporation to this city,

And whereas after a full investigation of the matter, it is believed by the members of this council that the rates and charges hereinafter prescribed are just and reasonable,

Therefore be it ordained by the city council of the city of Danville, Illinois:

SECTION 1. That beginning with the first day of May, A. D. 1895, the rates and charges for the supply of water furnished by the Danville Water Company, a corporation as aforesaid, to the said city of Danville, for public uses, shall be as follows, viz:

For the first one hundred and forty (140) fire-hydrants, now being rented by said city from said company, and for the supply of water furnished by said water company, for public uses, by, in and through said hydrants, and for which the said city is now paying said water company, the following rentals, viz: seventy-five dollars ($75.00) per year, per hydrant, for the first one hundred (100) hydrants; sixty-two and one-half dollars ($62.50) per year, per hydrant for the next twenty-one of said hydrants; fifty dollars ($50.00) per year, per hydrant for the next nineteen (19) of said hydrants, said Danville Water Company shall have and receive from said city of Danville and said city of Danville shall pay said water company the uniform rate and charge of fifty dollars ($50.00) per hydrant, per annum, and no more.

And for the next twelve (12) fire-hydrants above the one hundred and forty (140) above mentioned, and which are now rented by said city from said water company, and for the supply of water furnished

by the said water company for public uses, by, in and through twelve (12) hydrants, and for all other fire-hydrants now rented or which may be hereafter rented from said company and for the supply of water for public uses, furnished or to be furnished, in and through said hydrants, said Danville Water Company shall have and receive from said city of Danville, and said city of Danville shall pay said water company, the same rate as is now charged and paid for the same, viz: the rate and charge of forty dollars ($40.00) per hydrant, per annum, and no more.

And for the use of water for flushing the public sanitary sewers of said city, such as are now built and connected with the pipes and water mains of said water company, and such as may be hereafter built and so connected, which said water has hitherto been furnished by said water company free of charge, said Danville Water Company shall have and receive, from said city of Danville, and said city of Danville shall pay said water company, at the rate of five cents (5c.) per one thousand gallons, and no more.

And for the use of water by, in and through the public
141 drinking fountains now used by said city, and for which said water company is now furnishing water free of charge, said Danville Water Company shall have and receive, and said city shall pay said water company at the rate of five dollars ($5.00) per fountain, per annum, and no more.

And for water for any other use for which water is now taken by said city or for which water may be hereafter taken by said city from said water company, for public uses, other than as above specified, said Danville Water Company shall charge said city therefor at the same rates as are at that time charged by said water company to private consumers for the like service, which rate said city shall pay to said water company, therefor and no more.

SECTION 2. That the said city of Danville shall continue to take from said Danville Water Company all the supply of water now taken from it, but shall pay therefor only the rates and charges herein prescribed, all former ordinances and provisions to the contrary notwithstanding, and it is hereby made the duty of the city clerk to notify said water company of that fact by delivering to the superintendent of the water works of said company, in this city, a certified copy of this ordinance within five (5) days after the same is signed by the mayor, or shall go into effect without his signature.

SECTION 3. In case said water company shall desire to make application to the circuit court of Vermilion county, Illinois, for the purpose of having the question of the reasonableness of the rates and charges fixed herein, promptly determined, or for the purpose of having such rates and charges reviewed and determined by said circuit court, the corporation counsel is hereby authorized to enter the appearance of the city to such suit or cause as may be brought therefor at the February term, A. D. 1895, of said court.

142 Passed January 17th, A. D. 1895.
Approved January 19th, A. D. 1895.

JAMES SLOAN,
Mayor of the City of Danville.

Attest: R. E. LLOYD, *City Clerk.*

Which said ordinance was duly deposited in the office of the city clerk of said city and was afterwards, within the time required by law, viz., on, to wit, the 19th day of January, A. D. 1895, duly approved by the mayor of said city and by the city clerk duly recorded in all respects as required by law.

And afterwards, within five days after the approval of said ordinance, as aforesaid, the said city clerk, on, to wit, the 23rd day of January, A. D. 1895, delivered to the superintendent of the said Danville Water Company, in said city of Danville, a duly certified copy of said ordinance.

And the defendant further avers that the said plaintiff had due notice of the passage and approval of said ordinance and of the fact that said city of Danville would pay no other or greater sum or sums for hydrant rental or for the supply of water to be furnished by the said plaintiff to said city for public use, beginning with the first day of May, A. D. 1895, than the sums fixed in and by the said last-mentioned ordinance, viz., the sum of fifty dollars for the first one hundred and forty (140) of said hydrants per hydrant per annum, and the sum of forty dollars per hydrant per annum for the remaining eighteen (18) of said hydrants.

And that the said supply of water furnished by the plaintiff in manner and form as alleged by the plaintiff in its amended declaration was furnished by the said plaintiff with full knowledge of the passage and approval of said ordinance and after due notice of the
143 contents thereof; which said notice was given by the defendant to the plaintiff on, to wit, the 23rd day of January, A. D. 1895.

And that the rates fixed in and by the said last-mentioned ordinance are just and reasonable and are a reasonable compensation for the supply of water furnished by the plaintiff to the defendant in manner and form as alleged by the plaintiff in said amended declaration.

Wherefore the defendant alleges that the said plaintiff is entitled to have and receive from the defendant from the said supply of water so furnished, as aforesaid, no other or greater sum than the sum of nineteen hundred and thirty dollars (1,930.00), being the amount of rental for such fire-hydrants and the water supplied through the same as fixed by said last-mentioned ordinance; and this the defendant is ready to verify. Wherefore it prays judgment whether the plaintiff ought to have or maintain its aforesaid action thereof against this defendant except as to the said sum of nineteen hundred and thirty dollars, parcel, etc.

And for a further plea in this behalf, by leave of the court here first had and obtained, as to the said sum of nineteen hundred and thirty dollars above mentioned, parcel of the said several sums of money in the said amended declaration mentioned, the said defendant says that on, to wit, the 1st day of August, A. D. 1895, on the day the same fell due and before the commencement of this suit, at, to wit, the county aforesaid, the defendant tendered the plaintiff, in full settlement of the matters set forth in the said amended declaration, a city order or warrant for the said sum of nineteen hundred and thirty

dollars, drawn upon the treasurer of the said city, and that said city then and there had funds in the hands of said officer lawfully appropriated for that purpose and sufficient to pay the same in full, to receive which of the said defendant the plaintiff then and there
144 and thence hitherto hath wholly refused; and the said defendant further says that it is ready and willing to deliver the said order to said plaintiff in payment of said claim of the plaintiff sued upon in this case, and it brings the said order into court here to be delivered to the plaintiff, if said plaintiff will accept the same; and this the defendant is ready to verify. Wherefore it prays judgment if the said plaintiff ought to have or maintain its aforesaid action thereof to recover any more or greater damages than said sum of nineteen hundred and thirty dollars, parcel, etc., in this behalf, etc.

And for a further plea in this behalf, by the leave of the court here first had and obtained, the defendant comes and defends the wrong and injury, when, etc., at, etc., and as to all and singular the supposed premises and undertakings in said amended declaration mentioned says that the said plaintiff ought not to have or maintain its aforesaid action thereof against the defendant, because the defendant says that neither by the ordinances in said amended declaration mentioned nor by any other ordinance or ordinances or in any other manner or by any other means, at any time whatever, either before, at the time, or since the incurring of the indebtedness in said declaration alleged to have been incurred, has any provision been made for the collection of a direct annual tax sufficient to pay such alleged indebtedness, nor has any provision been made for the collection of any tax whatever to pay said alleged indebtedness, nor was any provision whatever made at the time of or previous to the incurring of the alleged indebtedness for the payment thereof.

And this the defendant is ready to verify; wherefore it prays judgment if the plaintiff ought to have or maintain its aforesaid action against the defendant, etc.

145 And for a further plea in this behalf, by the leave of the court here first had and obtained, the defendant comes and defends the wrong and injury when, etc., and as to all and singular at, etc., and as to all and singular the supposed promises and undertakings in said amended declaration mentioned says that the plaintiff ought not to have or maintain its aforesaid action thereof against the defendant, because the defendant says that neither at the time of entering into each of the alleged contracts or any of them, nor at the time of the passage of the several ordinances in said declaration mentioned, or any of them, nor at the time of the making of the several alleged promises in said declaration mentioned or any of them, nor at the time before or at the incurring said alleged indebtedness or any part thereof, had there been or was there any appropriation previously made concerning the expense thereof or had been or was any appropriation or provision whatever made for the payment of the supposed indebtedness aforesaid or any part thereof.

And this the defendant is ready to verify; wherefore it prays judg-

ment if the plaintiff ought to have or maintain its aforesaid action against the defendant, etc.

W. J. CALHOUN,
Atty for Def't.
G. F. REARICK, *City Atty.*

Filed Mar. 21, 1896.
M. J. BARGER, *Clk.*

On the 21st day of March, 1896, there was filed in the office of the clerk of said court the plaintiff's demurrer to the said pleas of defendant in the words and figures following, to wit:

146 WATER COMPANY
vs.
CITY.

Gen'l Demurrer to Pleas to Amended Decl.

In the Circuit Court, January Term, 1896.

DANVILLE WATER COMPANY
vs.
CITY OF DANVILLE, ILLINOIS. } Gen'l Demur. to Pleas.

And now comes the plaintiff and demurs to each and all of the defendant's pleas herein to the amended declaration, because it says that they nor neither of them constitute a defense to the plaintiff's amended declaration, etc.

W. R. LAWRENCE, WITH
REMY & MANN,
Plaintiff's Attorneys.

Filed March 21st, 1896.
M. J. BARGER, *Clerk.*

On the 21st day of March, 1896, the following proceedings were had and entered of record in said court, to wit:

147 January Term, 1896, 32 Day.

SATURDAY MORNING, *March* 21, 1896.

THE DANVILLE WATER CO.
vs.
THE CITY OF DANVILLE. } 11354. Assumpsit.

Now come said parties, by their respective attorneys, and on motion of plaintiff it has leave to file a new declaration herein, and plaintiff files its demurrer to the defendant's pleas herein, and said defendant moves the court to have demurrer carried back to the declaration.

SATURDAY MORNING, *April 11th*, 1896.

It is ordered that court do not adjourn until court in due course of law.

And afterward, at the May term of said court, the following proceedings were had and entered of record:

May Term, 1896, 13th Day.

MONDAY MORNING, *June 1st*, 1896.

THE DANVILLE WATER COMPANY
vs.
THE CITY OF DANVILLE. } 11354. Assumpsit.

Now come the parties, by their respective attorneys, and the court, having duly considered said plaintiff's demurrer to defendant's pleas herein filed and being fully advised in the premises, sustains said demurrer; to which ruling of the court defendant excepts and elects to stand by its said pleas. And it appearing to the court that said plaintiff has sustained damages by reason of the non-performance of certain promises in its declaration mentioned, it is therefore ordered that said plaintiff have judgment against said defendant for its said damages, now here assessed by the court at the sum of
148 ($2,697.00) twenty-six hundred and ninety-seven dollars. It is therefore considered and adjudged by the court that said plaintiff have and recover of and from said defendant, The City of Danville, the said sum of ($2,697.00) twenty-six hundred and ninety-seven dollars, and also its costs in this behalf expended, and that no execution issue; to which judgement and ruling of the court said defendant excepts and prays an appeal of this cause to the appellate court, which is granted upon said defendant filing its bill of exceptions in thirty days from this date.

SATURDAY MORNING, *August* 29, 1896.

Court convened, pursuant to adjournment, at 9 o'clock a. m.

It is ordered that court do now adjourn until court in due course of law.

On the 11th day of September, 1899, the following paper, with the sheriff's return thereon, was filed in the office of said clerk in the words and figures following:

WATER COMPANY
vs.
CITY.

Notice of Reinstatement, etc.

Sheriff's fees.

Serving	.65
Copy	.10
Return	.10
2 miles	.10
	.95

STATE OF ILLINOIS, } ss:
Vermilion County, }

I have duly served the within notice upon the within-named City of Danville by reading the same to Martin B. Bailey, its mayor,
149 and at the same time delivering to him a true copy thereof the 9th day of September, A. D. 1899.

JAMES SLOAN, *Sheriff.*
By JAMES SLOAN, JR., *Deputy.*

In the Circuit Court of Vermilion County, State of Illinois, of the October Term, 1899.

DANVILLE WATER COMPANY } Notice of Reinstatement of Cause, etc.
vs.
CITY OF DANVILLE. }

Notice is hereby given that said Danville Water Company has filed in the office of the clerk of said court the remanding order of the supreme court in the case of said cit*ie*'s writ of error in said cause, and that said cause will be reinstated on the docket for trial at said term of court.

W. R. LAWRENCE, WITH
REMY & MANN,
Att'ys for Water Company.

Filed September 11th, 1899.
M. J. BARGER, *Clerk.*

On the 5th day of September, 1899, there was filed in the office of the clerk of said court the remanding order of the supreme court in the words and figures following, to wit:

150 STATE OF ILLINOIS, } ss:
Supreme Court, }

At a supreme court begun and held at Springfield on the first Tuesday in the month of April, in the year of our Lord one thousand eight hundred and ninety-nine, the same being the 4th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Benjamin D. Magruder, justice; Jacob W. Wilkin, justice; Carroll C. Boggs, justice; James H. Cartwright, justice; Jesse J. Phillips, justice.

And afterwards, to wit, on the 17th day of June, in the year of our Lord one thousand eight hundred and ninety-nine, an order was made by said court in words and figures following, to wit:

THE CITY OF DANVILLE
vs.
THE DANVILLE WATER COMPANY. } Error to Vermilion.

On this day came again the said parties, and the court, having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, are of opinion that in the record and proceedings aforesaid and in the rendition of the judgment aforesaid there is manifest error. Therefore it is considered by the court that for that error and others in the record and proceedings aforesaid the judgment of the circuit court in this behalf rendered be reversed, annulled, set aside, and wholly for nothing esteemed, and that this cause be remanded to the circuit court for such other and further proceedings as to
151 law and justice shall appertain, and the motion heretofore entered to affirm said judgment is denied.

And it is further considered by the court that the said plaintiff in error recover of and from the said defendant in error costs by it in this behalf expended, and that it have execution therefor.

I, A. D. Cadwallader, clerk of the said supreme court, do hereby certify that the foregoing is a true copy of the final order of the said supreme court in the above-entitled cause, of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said supreme court, at Springfield, this 29th day of August, in the year of our Lord one thousand eight hundred and ninety-nine.

A. D. CADWALLADER,
Clerk of Supreme Court. [L. S.]

Filed September 5th, 1899.
M. J. BARGER, *Clerk.*

152 At the October term, 1899, of said court the following proceedings were had and entered of record:

October Term, 1899, October 2nd, 1899.

DANVILLE WATER COMPANY
vs.
THE CITY OF DANVILLE. } Assumpsit. No. 11354.

Now come the said parties, by their respective attorneys, and this cause is reinstated by the court; and the said defendant withdraws the third plea herein. Said plaintiff demurs to the first, second, fourth, and fifth special pleas herein, which demurrer is by the court sustained as to the fourth and fifth pleas, and defendant excepts thereto. By the order of the supreme court the demurrer is overruled as to the first and second pleas, and said plaintiff excepts; and said plaintiff elects to stand by its demurrer as to said first and second pleas; whereupon the court renders judgment. It is ordered and adjudged by the court that said plaintiff have and recover of and

from said defendant the sum of one thousand nine hundred and thirty dollars ($1,930.00) and costs of suit, and said defendant excepts to the rendering of said judgment. Said plaintiff prays an appeal of this cause to the supreme court; which appeal is by the court granted upon said plaintiff giving an appeal bond, conditioned according to law, with good security, to be approved by the clerk of this court, in the sum of two hundred dollars, said bond to be filed in thirty days.

On the 14th day of October, 1899, there was filed in the office of the clerk of said court the appeal bond of appellant, with the clerk's approval thereon endorsed, in the words and figures following, to wit:

153 *Appeal Bond from Circuit to Supreme Court.*

Danville Printing Company, printers.

Know all men by these presents that we, The Danville Water Company (a body politic and corporate), as principal, and G. B. Sidelinger, as surety, of the county of Vermilion and State of Illinois, are held and firmly bound unto the City of Danville, Illinois, in the penal sum of two hundred, 200, dollars; for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by the- presents.

Sealed with our seals and dated, at Danville, this — day of October, in the year of our Lord one thousand eight hundred and ninety-nine.

The condition of the above obligation is such that whereas the said The Danville Water Company —, the second day of October, one thousand eight hundred and ninety-nine, at a term of court then being holden within and for the fifth judicial circuit, in the county of Vermilion and State of Illinois, obtain- a judgment against the above-bounden The City of Danville for the sum of nineteen hundred and thirty dollars and — cents and costs of suit in an action therein pending, wherein it claimed and demanded twenty-six hundred and twenty & $\frac{62}{100}$ dollars, from which judgment the said The Danville Water Company has prayed for and obtained an appeal to the supreme court of said State:

Now, if the said The Danville Water Company shall duly prosecute said appeal and shall, moreover, pay the amount of the costs, interest, and damages, rendered and to be rendered, against it, the said The Danville Water Company, in case said judgment shall be affirmed in the said supreme court, then the above obligation to be null and void; otherwise to remain in full force and virtue.

[L. S.] DANVILLE WATER CO., [SEAL.]
By GEO. J. LONG, *Pres't.* [SEAL.]
G. B. SIDELINGER. [SEAL.]

Attest: W. J. McGONIGAL, *Sec'y.* [SEAL.]

154 October Term, 1899.

DECEMBER 30TH, 1899, SATURDAY MORNING.

Court convened, pursuant to adjournment, at 9 o'clock a. m., all the officers of said court present, as hereinbefore set forth; whereupon certain proceedings were had and entered of record in said court in words and figures following, to wit:

It is ordered that court adjourn until court in due course of law.

I, M. J. Barger, clerk of the circuit court of Vermilion county, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of the record and of the appeal bond in a certain cause lately pending in said court, on the law side thereof, wherein The Danville Water Company was plaintiff and The City of Danville was defendant, being No. 11354.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Danville, this 10th day of January, A. D. 1900.

[SEAL.] M. J. BARGER, *Clerk*.

155 DANVILLE WATER COMPANY, Appellant, } Appellant's Assignment of Errors.
vs.
CITY OF DANVILLE, Appellee. }

And now comes said appellant, by Remy and Mann and W. R. Lawrence, its attorneys, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

I. The circuit court erred in overruling the demurrer of appellant to the first plea to the amended declaration, because the act of the General Assembly of the State of Illinois—that is to say, the act approved June 6, 1891—in said plea mentioned and therein relied upon as the defense is repugnant to section ten of article one of the Constitution of the United States of America, which prohibits any State to pass a law impairing the obligation of a contract.

II. The circuit court erred in overruling appellant's demurrer to the first original plea to the amended declaration, because the ordinance of defendant passed on the 19th day of January, 1895, under and by virtue of the supposed authority in said act of the General Assembly of the State of Illinois, approved June 6th, 1891, which is set forth in said plea, seeks to avoid and abrogate the contract between plaintiff and defendant created by the various ordinances in said declaration mentioned, and the acceptance thereof by appellant, and by reason whereof is repugnant to section 10, article 1, of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of a contract.

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III. The circuit court erred in overruling appellant's demurrer to defendant's first original plea to the amended declaration for the reason that the ordinance of appellee set forth in said plea and passed January 19, 1895, under the supposed authority of said act of the General Assembly of the State of Illinois approved June 6, 1891, in said first plea set forth, is in violation of section 1 of the 14th

amendment to the Constitution of the United States, which provides that no State shall deprive any person of life, liberty, or property without due process of law, nor to deny any person within its jurisdiction the equal protection of the laws.

IV. The circuit court erred in overruling the demurrer of appellant to the first original plea to the amended declaration, because the act of the General Assembly of the State of Illinois, to wit, the act approved June 6th, A. D. 1891, in said plea mentioned, is in violation of the laws and constitution, and, among others, is in violation of the fourteenth amendment to the Constitution of the United States, in that it attempts to deprive, and to authorize the city of Danville to deprive, appellant of its property without due process of law.

V. The circuit court erred in overruling the demurrer of appellant to the second original plea to the amended declaration, because the act of the General Assembly of the State of Illinois—that is to say, the act approved June 6th, 1891—in said plea mentioned and therein relied upon as the defense is repugnant to section ten of article one of the Constitution of the United States of America, which prohibits any State to pass a law impairing the obligation of a contract.

VI. The circuit court erred in overruling the demurrer of
157 appellant to the second original plea to the amended declaration, because the ordinance of defendant passed on the 19th day of January, 1895, under and by virtue of the supposed authority in said act of the General Assembly of the State of Illinois approved June 6th, 1891, which is set forth in said plea, seeks to avoid and abrogate the contract between plaintiff and defendant created by the various ordinances in said declaration mentioned, and the acceptance thereof by appellant, and by reason thereof is repugnant to section 10, article one, of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of a contract.

VII. The circuit court erred in overruling appellant's demurrer to defendant's second original plea to the amended declaration for the reason that the ordinance of appellee set forth in said plea and passed January 19, 1895, under the supposed authority of said act of the General Assemby of the State of Illinois approved June 6th, 1891, in said plea set forth, is in violation of section one of the 14th amendment of the Constitution of the United States, which provides that no State shall deprive any person of life, liberty, or property without due process of law, nor to deny any person within its jurisdiction the equal protection of the laws.

VIII. The circuit court erred in overruling the demurrer of appellant to the second original plea to the amended declaration, because the act of the General Assembly of the State of Illinois, to wit, the act approved June 6th, A. D. 1891, in said plea mentioned is in violation of the laws and constitution, and, among others, is in violation of the fourteenth amendment to the Constitution of the United States, in that it attempts to deprive, and to authorize the city of Dan-

ville to deprive the appellant of its property without due process of law.

REMY & MANN,
W. R. LAWRENCE,
Attorneys for Appellant.

158 In the Supreme Court of the State of Illinois, Central Grand Division, February Term, A. D. 1900.

DANVILLE WATER CO., Appellant, vs. CITY OF DANVILLE, Appellee. } Appeal from the Circuit Court of Vermilion County.

Cross-errors Assigned by Appellee.

And now comes The City of Danville, appellee, by John H. Lewman, city attorney, and Geo. F. Rearick, its attorneys, and shows the court here that there is manifest error in the record herein in this, that is to say:

1. It was error to sustain a demurrer to the fourth plea filed by the defendant.
2. It was error to sustain a demurrer to the fifth plea filed by the defendant.
3. It was error to render judgment against the said defendant for the sum of nineteen hundred and thirty dollars or any other sum.
4. It was error not to enter judgment for the defendant.
5. The judgment of the circuit court should have been against the plaintiff for costs of suit.

Wherefore, for the reasons above set forth and which the record will sustain, the judgment of said circuit court ought to be reversed.

JOHN H. LEWMAN, *City Att'y,*
GEO. F. REARICK,
Att'ys for Appellee.

159 And be it further remembered that afterwards, to wit, on the 9th day of February, A. D. 1900, the following proceedings were had in said cause:

DANVILLE WATER COMPANY vs. THE CITY OF DANVILLE. } Error to Vermilion.

And now, on this day, comes the defendant in error in this cause, by attorney, and moves the court to consolidate this cause with cause No. 1291 on the docket for this term; and the court, not being sufficiently advised of and concerning the premises, takes said motion under advisement.

And be it further remembered that afterwards, to wit, on the 15th day of February, A. D. 1900, an order was made by the court in said cause in the words and figures following, to wit:

DANVILLE WATER COMPANY
vs.
THE CITY OF DANVILLE. } Error to Vermilion.

And now, on this day, come again the parties herein, by attorney, and, the court being now sufficiently advised of and concerning the premises, the motion of the defendant in error to consolidate this cause with cause No. 1291 on the docket for this term is allowed, and the two causes are consolidated accordingly.

And be it further remembered that afterwards, to wit, on the 20th day of February, A. D. 1900, an order was made in said cause in the words and figures following, to wit:

DANVILLE WATER COMPANY
vs.
THE CITY OF DANVILLE. } Error to Vermilion.

On this day come the said parties, by their attorneys, and this being one of the days set apart for the call of the docket under the rules or order of the court for this term, and this cause coming now on to be heard, the plaintiff in error having entered motion to reverse the judgment
160 and remand the cause, and for costs, and the defendant in error having entered motion to affirm the judgment herein, and for costs and for *procedendo*, and said motions being taken under advisement for final hearing, and the clerk reporting to the court that said cause is now ready to be taken on the call of the docket, it is ordered by the court that this cause be now submitted upon the record, abstracts, briefs, and arguments filed and to be filed herein under the rules or order of the court; and it is further ordered by the court that this cause be now taken under advisement for final hearing.

And be it further remembered that afterwards, to wit, on the 21st day of June, A. D. 1900, an opinion was filed in said cause in the words and figures following, to wit:

Docket No. 1291, 1292, Agenda 61, Central Div., Feb., 1900.

DANVILLE WATER COMPANY
vs.
CITY OF DANVILLE. } Appeal from Vermilion.

Per curiam.

This case has practically been before us on two former occasions, the parties then being reversed.

Counsel for appellant concedes the judgment from which this appeal is taken is in exact conformity with the judgments and opinions in the former cases, and that no new question or matter has intervened since the former hearings here. Manifestly the only purpose of this appeal is to obtain a final judgment in this court to enable appellant to take a further appeal, if it should desire to do so.

Adhearing as we do to the reasoning and conclusions announced in Danville Water Co. *v.* The City of Danville, 78 Ill., 229, and Same *v.* Same, 180 Ill., 235, on the authority of these cases this judgment will be affirmed.

Judgment affirmed.

161 And be it further remembered that afterwards, to wit, on the 21st day of June, A. D. 1900, an order was made by said court in the words and figures following, to wit:

DANVILLE WATER COMPANY
vs.
THE CITY OF DANVILLE. } No. 1291, 1292. Error to Vermilion.

On this day come the said parties, and the court having diligently examined and inspected, as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that the record is no error, therefore it is considered by the court that the motions heretofore made to reverse the judgment and remand said cause for a new trial be, and the same are, denied, and the motion heretofore made to affirm the judgment herein is allowed; and it is therefore ordered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matter and things therein assigned for error, and that motion for *procedendo* be allowed; and it is further considered by the court that the defendant in error recover of and from the plaintiff in error costs by it in this behalf expended, and that it have execution therefor.

And be it further remembered that afterwards, to wit, on the 18th day of July, A. D. 1900, there was filed in the office of said clerk of the supreme court an appeal bond, which is in the words and figures following, to wit:

162 In the Supreme Court of Illinois.

DANVILLE WATER COMPANY, Plaintiff in Error,
vs.
THE CITY OF DANVILLE, Defendant in Error.

Know all men by these presents that we, The Danville Water Company, a corporation organized and existing under the laws of the State of Illinois, as principal, and The Fidelity & Deposit Company of Maryland, as surety, are held and firmly bound unto The City of Danville, its successors and assigns, in the sum of five hundred ($500.00) dollars; for the payment of which, well and truly to be made, we, The Danville Water Company, for itself, its successors, and assigns, and the said Fidelity & Deposit Company of Maryland,

its successors and assigns, bind ourselves, jointly and severally, firmly by these presents.

Witness our hands and seals this July 9th, 1900.

The condition of this obligation is such that whereas the said Danville Water Company instituted a certain action against the City of Danville in the circuit court of Vermilion county, claiming a certain sum of money, and a large part of the relief claimed by the Danville Water Company was denied, and subsequently a writ of error was taken from the said judgment to the supreme court of Illinois, which affirmed the same; and whereas the said Danville Water Company has sued out a writ of error from the Supreme Court of the United States to reverse the said order and judgment of the supreme court of Illinois:

Now, therefore, if the above-bounden Danville Water Company shall prosecute said writ of error to effect and answer all costs if it fail to make good its appeal, then this obligation shall be void; otherwise to remain in full force and effect.

163 DANVILLE WATER COMPANY,
[SEAL.] By GEO. J. LONG, *Pres't.*
FIDELITY & DEPOSIT COMPANY OF MARYLAND,
[SEAL.] By BLEWETT LEE, *Resident Director.*

Attest: W. J. McGONIGALE, *Sec'y.*

Z. L. TIDBALL,
General Manager.

STATE OF KENTUCKY, } *set:*
Jefferson County, }

This day personally appeared before me Geo. J. Long, known to me to be the person who signed the foregoing, and acknowledged the same as the act and deed of the Danville Water Company; and also appeared W. J. McGonigale, known to me to be the person who attested the same, and acknowledged that he so attested it as secretary of the Danville Water Company and affixed its seal as such.

Witness my hand and seal this July 10th, 1900.

WM. SACKETT,
[SEAL.] *Notary Public, Jefferson Co., Ky.*

Commission expires next session of the senate.

STATE OF ILLINOIS, } *ss:*
County of Cook, }

I, Arthur C. Arnold, a notary public in and for said county and State, do hereby certify that Blewett Lee, resident director, and Z. L. Tidball, general manager, of the Fidelity and Deposit Company of Maryland, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the foregoing instrument as *their free and voluntary as* resident director and general manager respectively of the Fidelity and Deposit Company of Mary-

land, and as the free and voluntary act of the Fidelity and Deposit Company of Maryland, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 11th day of
164 July, A. D. 1900.

ARTHUR C. ARNOLD,
Notary Public.

[SEAL.]

Commission expires May 4th, 1901.

The above and foregoing bond is approved this 13th day of July, 1900.

CARROLL C. BOGGS,
Chief Justice of the Supreme Court of Illinois.

Indorsements: Supreme court of Illinois. Danville Water Co. *vs.* City of Danville. Bond. Filed Jul- 18, 1900. A. D. Cadwallader, clerk supreme court.

165 Supreme Court of the United States.

DANVILLE WATER COMPANY, Plaintiff in Error,
vs.
CITY OF DANVILLE, Defendant in Error.

In error to the supreme court of the State of Illinois.

Now comes the plaintiff in error, The Danville Water Company, by Alex. P. Humphrey, its attorneys, and says that in the record and proceedings in this cause in the supreme court of the State of Illinois there is manifest error, in this, to wit:

1. The said supreme court of Illinois erred in affirming the judgment of the circuit court of Vermilion county, wherein the said circuit court overruled the demurrer of the plaintiff in error to the first plea of the defendant in error to the amended declaration, because the act of the General Assembly of the State of Illinois—that is to say, the act approved June 6, 1891—*and* said plea mentioned and therein relied upon as a defense, is repugnant to section 10 of article 1 of the Constitution of the United States of America, which prohibits any State to pass a law impairing the obligation of a contract.

2. The said supreme court of Illinois erred in affirming the judgment of the circuit court of Vermilion county, Illinois, wherein said circuit court overruled the demurrer of the plaintiff in error to the first original plea of the defendant in error to the amended declaration, because the ordinance of the defendant in error passed on the 19th day of January, 1895, under and by
166 virtue of the supposed authority in said act of the General Assembly of the State of Illinois approved June 6, 1891, which is set forth in said plea, seeks to avoid and abrogate the contract between plaintiff in error and the defendant in error created by the various ordinances in said declaration mentioned and the acceptance thereof by plaintiff in error, and by reason thereof is

repugnant to section 10, article 1, of the Constitution of the United States of America, which provides that no State shall pass any law impairing the obligation of a contract.

3. The said supreme court of Illinois erred in affirming the judgment of the circuit court of Vermilion county, Illinois, wherein the said court overruled the demurrer of the plaintiff in error to the first original plea of defendant in error to the amended declaration, for the reason that the ordinance of the defendant in error set forth in said plea and passed January 19, 1895, under the supposed authority in said act of the General Assembly of the State of Illinois approved June 6, 1891, in said first plea set forth, is in violation of section 1 of the fourteenth amendment to the Constitution of the United States, which provides that no State shall deprive any person of life, liberty, or property without due process of law nor deny to any person within its jurisdiction the equal protection of its laws.

4. The said supreme court of Illinois erred in that it affirmed the judgment of the circuit court of Vermilion county, Illinois, wherein the demurrer of the plaintiff in error was overruled to the first original plea of the defendant in error to the amended declaration, because the act of the General Assembly of the State of Illinois, to wit, the act approved June 6, 1891, in the said plea mentioned, is in violation of the laws and Constitution and, among other
167 things, is in violation of the fourteenth amendment of the Constitution of the United States, in that it attempts to deprive and to authorize the defendant in error to deprive the plaintiff in error of its property without due process of law.

5. The said supreme court of Illinois erred in affirming the judgment of the circuit court of Vermilion county, Illinois, in overruling the demurrer of the plaintiff in error to the second original plea of the defendant in error to the amended declaration, because the act of the General Assembly of the State of Illinois—that is to say, the act approved June 6, 1891—in said plea mentioned and therein relied on as the defense, is repugnant to section 10 of article 1 of the Constitution of the United States of America, which prohibits any State to pass a law impairing the obligation of a contract.

6. The said supreme court of Illinois erred in affirming the judgment of the circuit court of Vermilion county, Illinois, in *and* overruling the demurrer of the plaintiff in error to the second original plea of the defendant in error to the amended declaration, because the ordinance of the defendant in error passed on the 19th day of January, 1895, under an- by virtue of the supposed authority in said act of the General Assembly of the State of Illinois approved June 6, 1891, which is set forth in said plea, seeks to avoid and abrogate the contract between the plaintiff in error and defendant in error created by the various ordinances in said declaration mentioned and the acceptance thereof by plaintiff in error, and by reason thereof is repugnant to section 10 of article 1 of the Constitution of the United States of America, which provides that no State shall pass any law impairing the obligation of a contract.

168 7. The said supreme court of Illinois erred in affirming the judgment of the circuit court of Vermilion county, Illinois,

in overruling the demurrer of the plaintiff in error to the second original plea of the defendant in error to the amended declaration, because the ordinance of appellee set forth in said plea and passed January 19, 1895, under the supposed authority of said act of the General Assembly of the State of Illinois approved June 6, 1891, in said second plea set forth, is in violation of section 1 of the fourteenth amendment to the Constitution of the United States, which provides that no State shall deprive any person of life, liberty, or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

8. The said supreme court of Illinois erred in that it affirmed the judgment of the circuit court of Vermilion county, Illinois, in overruling the demurrer of the plaintiff in error to the second original plea of the defendant in error to the amended declaration, because the act of the General Assembly of the State of Illinois, to wit, the act approved June 6, 1891, in said plea mentioned, is in violation of the Constitution and laws of the United States and, among other things, is in violation of the fourteenth amendment to the Constitution of the United States, in that it attempts to deprive and to authorize the defendant in error to deprive the plaintiff in error of its property without due process of law.

9. The said supreme court of Illinois erred in deciding that the authority exercised under the State of Illinois by the city of Danville in passing the certain ordinances set forth in its first and second original pleas was valid, and in rendering its said judgment in said cause upheld the validity of said authority; which said au-
169 thority and the exercise thereof were repugnant to the Constitution of the United States.

10. The said supreme court of Illinois erred in deciding that the rights and privileges conferred upon the plaintiff in error by the ordinances set forth by it were not vested rights, and erroneously entered judgment against said rights and privileges of the plaintiff in error, which are especially set up and claimed under the Constitution of the United States.

11. The said supreme court of Illinois erred in deciding that no contract to pay the rates for water which are charged by the plaintiff in error to the defendant in error existed between said plaintiff in error and said defendant in error, and that the plaintiff in error, by virtue of the obligation of the water company and the acceptance thereof in said record appearing, and which decision of said court impairs the obligation of the contract, in violation of the provisions of the Consitution of the United States.

Wherefore the said plaintiff in error, The Danville Water Company, prays that the judgment of the said supreme court of Illinois may be reversed by this honorable court.

July 9, 1900.

ALEX. P. HUMPHREY, *For Pl'ff.*

170 UNITED STATES OF AMERICA, *ss:*

To The City of Danville, Illinois, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, thirty (30) days after the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein The Danville Water Company is plaintiff in error and you are the defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said writ of error mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Carroll C. Boggs, chief justice of the supreme court of the State of Illinois, this July 13th, 1900.

CARROLL C. BOGGS,
Chief Justice Supreme Court of Illinois.

Service of the above and foregoing assignment of errors and citation acknowledged and copies of same received at Danville, Illinois, this 17 day of July, A. D. 1900.

M. B. BAILEY,
Mayor City of Danville, Ill.

171 I, A. D. Cadwallader, clerk of the supreme court of the State of Illinois, duly elected and qualified, in and for what was formerly known as the central grand division, do hereby certify that the above and foregoing is a true and correct copy of the original records in two certain causes, wherein The Danville Water Company was the plaintiff in error and The City of Danville was the defendant in error, which causes were numbered 1291 and 1292 respectively on the docket of said supreme court of the February term, A. D. 1900, and were consolidated by leave of the court, and also a true and correct copy of all the proceedings had and of record in the said supreme court, and also a true and correct copy of the appeal bond filed in said consolidated cause, also the original citation, with acknowledgment of service thereof, as the same appears from the records and files in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the supreme court, at Springfield, Illinois, this 31st day July, A. D. 1900.

[Seal of the Supreme Court, State of Illinois, Aug. 26, 1818.]

A. D. CADWALLADER,
Clerk Supreme Court.

172 UNITED STATES OF AMERICA, *sct:*

The President of the United States to the honorable the judges of the supreme court of the State of Illinois, Greeting:

Because in the records and proceedings, as also in the rendition of a judgment of a plea which is in the said supreme court of Illinois between The Danville Water Company, a corporation, as plaintiff in error, and The City of Danville, as defendant in error, a manifest error hath occurred, to the great damage of the said water company, as by its complaint is alleged, and wherein it is claimed its certain rights and privileges under the Constitution of the United States were decided against by your said court, and that your said court decided in favor of a certain authority exercised under the State of Illinois, and which said authority and the exercise thereof were regugnant to the Constitution of the United States, we, being willing that said errors, if any hath been, shall be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writing, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that alleged error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice
173 of the United States, this June 27, A. D. 1900.

{ The Seal of the Circuit Court of the United States for the South'n Dist. Ill. }

JAMES T. JONES,
Clerk of the Circuit Court of the United States for the Southern District of Illinois.

Allowed by—

CARROLL C. BOGGS,
Chief Justice of the Supreme Court of Illinois.

[Endorsed:] Filed Jul- 18, 1900. A. D. Cadwallader, clerk supreme court.

174 In obedience to the above and foregoing writ of error I herewith return a full, true, and correct copy of the original records in said cause, together with a full, true, and correct copy of all the proceedings had and of record in said cause in the supreme court of the State of Illinois; and I hereby certify that a copy of said writ of error is now on file in my office, in the city of Springfield, county of Sangamon and State of Illinois, the same having

been filed by the plaintiff in error on the 18th day of July, A. D. 1900, for the defendant in error and so indorsed.

Witness my hand and the seal of the supreme court of the State of Illinois this 31st day of July, A. D. 1900.

[Seal of the Supreme Court, State of Illinois, Aug. 26, 1818.]

A. D. CADWALLADER,
Clerk Supreme Court.

Endorsed on cover: File No., 17,858. Illinois supreme court. Term No., 373. The Danville Water Company, plaintiff in error, *vs.* The City of Danville. Filed August 3d, 1900.